Windows onto Jewish Legal Culture

Fourteen Exploratory Essays

Edited by Hanina Ben-Menahem, Arye Edrei and Neil S. Hecht
This book opens windows onto various aspects of Jewish legal culture. Rather than taking a structural approach, and attempting to circumscribe and define ‘every’ element of Jewish law, *Windows onto Jewish Legal Culture* takes a dynamic and holistic approach, describing diverse manifestations of Jewish legal culture, and its general mind-set, without seeking to fit them into a single structure.

Jewish legal culture spans two millennia, and evolved in geographic centers that were often very distant from one another both geographically and socio-culturally. It encompasses the Talmud and talmudic literature, the law codes, the rulings of rabbinical courts, the responsa literature, decisions taken by communal leaders, and study of the law in talmudic academies, the local study hall, and the home. But Jewish legal culture reaches well beyond legal and quasi-legal institutions; it addresses, and is reflected in, every aspect of daily life, from meals and attire to interpersonal and communal relations. *Windows onto Jewish Legal Culture* gives the reader a taste of the tremendous weight of Jewish legal culture within Jewish life.

Among the facets of Jewish legal culture explored are two of its most salient distinguishing features, namely, toleration and even encouragement of controversy, and a preference for formalistic formulations. These features are widely misunderstood, and Jewish legal culture is often parodied as hair-splitting argument for the sake of argument. In explaining the epistemic imperatives that motivate Jewish legal culture, however, this book paints a very different picture. Situational constraints and empirical considerations are shown to provide vital input into legal determinations at every level, and the legal process is revealed to be attentive to context and sensitive to cultural concerns.
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Fourteen Exploratory Essays

Hanina Ben-Menahem
Arye Edrei
Neil S. Hecht
Editors

VOLUME ONE
For Elly Leary, Richard Pearlstone, and the Pearlstone Foundation, whose support made possible the publication of these volumes
# Table of Contents

## VOLUME ONE

<table>
<thead>
<tr>
<th>Acknowledgments</th>
<th>ix</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contributors</td>
<td>xi</td>
</tr>
<tr>
<td>Note to the reader</td>
<td>xiii</td>
</tr>
<tr>
<td>Introduction</td>
<td>xv</td>
</tr>
</tbody>
</table>

**Distinguishing features**

1. Controversy                     1
2. Legal formalism                49

**Judicial process**

3. Exigency authority            85
4. Erroneous rulings             131
5. Finality of judgment          173

**Self-help**

6. Self-help                      213
7. Law of the pursuer            266

List of halakhic authorities and scholars  320
# VOLUME TWO

**Law and ethics**  
8. Equity  
9. Charity and distributive justice  
10. Euthanasia

**Private law**  
11. Agency  
12. Employee and independent contractor  
13. Unjust enrichment  
14. Free market competition in Jewish law

List of halakhic authorities and scholars  
Index  
Contributor affiliations
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<table>
<thead>
<tr>
<th>Contributors</th>
<th>Authors</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Controversy</td>
<td>Hanina Ben-Menahem</td>
</tr>
<tr>
<td>2. Legal formalism</td>
<td>Hanina Ben-Menahem</td>
</tr>
<tr>
<td>3. Exigency authority</td>
<td>Hanina Ben-Menahem</td>
</tr>
<tr>
<td>4. Erroneous rulings</td>
<td>Arye Edrei</td>
</tr>
<tr>
<td>5. Finality of judgment</td>
<td>Eliav Shochetman</td>
</tr>
<tr>
<td>6. Self-help</td>
<td>Shimshon Ettinger</td>
</tr>
<tr>
<td>7. Law of the pursuer</td>
<td>Arnold Enker</td>
</tr>
<tr>
<td>8. Equity</td>
<td>Hanina Ben-Menahem</td>
</tr>
<tr>
<td>9. Charity and distributive justice</td>
<td>Benjamin Porat</td>
</tr>
<tr>
<td>10. Euthanasia</td>
<td>Daniel Sinclair</td>
</tr>
<tr>
<td>11. Agency</td>
<td>Shimshon Ettinger</td>
</tr>
<tr>
<td>12. Employee and independent contractor</td>
<td>Berachyahu Lifshitz</td>
</tr>
<tr>
<td>13. Unjust enrichment</td>
<td>Itamar Warhaftig</td>
</tr>
<tr>
<td>14. Free market competition in Jewish law</td>
<td>Sinai Deutch</td>
</tr>
</tbody>
</table>
Note to the reader

The chapters of *Windows onto Jewish Legal Culture: Fourteen Exploratory Essays* are replete with references to halakhic authorities and their writings. Many of these authorities are customarily referred to by acronyms of their names (e.g., Rashi, the Hida) or of the titles of their best-known works (e.g., the Sela, the Shakh); or by the titles of these works themselves (the Tur, the Arukh Hashulhan). To assist the reader in identifying these individuals, a list of the rabbinical authorities cited or referred to is provided at the end of each volume, along with a brief bio-bibliographic description. The authorities and scholars are listed alphabetically by their first name in English; in some cases they are also listed by their acronym (Rashi, the Rabad) or other commonly-used appellation (Maimonides, Gerondi). When a book title is used to refer to an individual, it is not italicized.

In references to the Talmud, m, b, j, or t prefixed to the tractate name indicates whether the Mishnah, the Babylonian Talmud, Jerusalem Talmud, or Tosefta is being referred to.
This book is not an introduction to Jewish law. Rather, it takes the reader on a journey through largely unmarked territory, seeking to provide an idea of the complexity, multi-dimensionality, and unevenness of the area being explored. It assumes that the traveler has a general idea of the terrain she is exploring. It does not seek to present the ‘received’ view, that is, the generally accepted view, but rather to present an analysis of the subject from the author’s perspective.

Accordingly, the target audience of this volume is made up of those to whom the basic elements of Jewish legal culture are somewhat familiar, for though the book does provide background information on the principal concepts and legal sources, it does not present a comprehensive overview of the structure, history, and sources of Jewish law.

The Jewish legal heritage, in the broad sense, is best thought of as a legal culture rather than a legal system. The term ‘legal system’ assumes an organized institutional hierarchical order, an order that can hardly be said to have existed throughout Jewish history. Jewish legal culture is generated by various constituencies, between which there is often tension: the rabbinical establishment; the teachers and students of the law at the rabbinical academies (yeshivot), where they study the canonical texts of Jewish law, engaging in debate and dialogue as questions arise; the lay leadership, which conducts the civic affairs of Jewish communities; members of the community, who, by adopting certain customs and comportments on their own, force the establishment to acknowledge these behaviors, either condoning them or seeking to repress them; and the Gentile societies within which Jews live. As to the latter, it is important to keep in mind that there has always been a certain trickle-down effect by which Gentile mores penetrated and were unconsciously absorbed by Jewish communities.

The term ‘Jewish law,’ the usual English epithet for halakha, covers legal arrangements in a wide range of geographic areas and historical eras, from biblical times to the present. Jewish law, the foundational texts of which are the Torah (the Pentateuch) and the Talmud, is a normative system regulating all aspects of daily life, private and public, including ritual, property, family, commercial, tort, and penal law. In the public domain, it encompasses the judiciary, communal regulations, taxation and constitutional law.

Since the destruction of the Second Temple almost 2,000 years ago, Jewish law has not been the positive law of any state, and its central institution, the Great Sanhedrin—the high court—has been defunct. Moreover, since that time, certain parts of Jewish law, especially those corresponding to modern criminal law, have not been in force. A tension
between this anomalous reality and the ideal of a sovereign Jewish regime in its own territory with its own institutions, reflected in the frequently-encountered term “in our day,” which connotes the inferiority of our times, pervades Jewish law.

Although some segments of the halakha are valid only in the land of Israel, the jurisdiction of Jewish law is personal, not territorial, and applies to Jews everywhere.

The role of Jewish legal culture in post-biblical Jewish civilization cannot be overestimated. The law is not only the force that held Jews together, both in the land of Israel and throughout the Diaspora, but its study and interpretation are also the primary focus of Jewish intellectual endeavor, by far overshadowing philosophy, homiletics and Kabbala. Study of the law is a paramount religious duty, to be carried out daily by laymen as well as scholars. Social and personal success are measured by achievement in studying the law. Furthermore, students are encouraged to speak their mind, even if their opinions diverge from the received view, empowering individuals to participate in the evolution of the law. Though limited to those actually engaged in Torah study, this participation has a ripple effect, generating a sense in the community that the law, being an ongoing enterprise rather than dictated from above, is democratic, so to speak. Another element that reflects the participatory dimension of Jewish legal culture is the cardinal, all-embracing decision-making principle that the law is decided in accordance with the majority view.

The formative era of Jewish law is the talmudic period, during which the foundational texts of Jewish law—the Mishnah and the Talmud—were composed. The Mishnah is the preeminent compilation of the teachings of the Tannaim, sages who lived in Palestine in the first two centuries CE. Arranged thematically, it covers the entire legal spectrum: family law, civil law, agricultural law, ritual law, criminal law, etc. The Mishnah itself became a focus of interpretative analysis by later sages, the Amoraim, whose work was not limited to commentary on the law, but also addressed the general culture of the time. Palestinian Amoraic academies produced the Jerusalem Talmud, compiled around 400 CE; Babylonian Amoraic academies produced the Babylonian Talmud about a century later. Redaction is far more evident in the latter than the former.

The evolution and philosophy of Jewish legal culture cannot be understood without a firm grasp of talmudic law. The unique position of the Babylonian Talmud vis-à-vis later works is grounded in the fact that it is the latest text universally accepted by Jewish legal culture as halakhically authoritative. Its authority was established by the Geonim, heads of Babylonian talmudic academies after the Muslim conquest of Babylonia. From then on, every legal discussion takes as its starting point the Babylonian Talmud’s position on the question at hand, though it is not necessarily upheld as law. Most of the halakhic literature is essentially elaboration of and commentary on the Talmud. Due to its interpretative
nature, halakhic creativity emerges in successive layers, in tree-ring fashion. As earlier contributions are always retained, the evolution of Jewish legal culture can be traced relatively easily.

A potentially misleading duality between the exposition of the law and its implementation in practice has always existed in Jewish law. The use of exact measurements and precise, detailed formulations (midot veshiurim), and the avoidance of such abstract formulations as ‘reasonable behavior’ and ‘bona fide conduct,’ could create the impression that talmudic law is a dry legalistic system within which rights and obligations are rigid and decisions pedantic. But this impression is fundamentally incorrect. Talmudic law as applied in practice (halakha lemaase) cannot be inferred from its theoretical exposition (halakha). This distinction is not imposed upon the sources, but found in the sources themselves. Thus, for example, the Talmud explains a misunderstanding as follows: “He was talking in terms of theoretical law, and they understood him as if he were talking about implementation of the law” (jBeitza 2:1[61b]); and states: “One who inquires about practical law must state that he is inquiring for practical purposes…. [given] a practical inquiry and a theoretical inquiry, the practical takes precedence” (tSanhedrin 7:7).

Any attempt to describe Jewish law must therefore carefully distinguish between theoretical law and law intended for implementation. With respect to the talmudic period, an account of the latter can be provided on the basis of episodes, precedents, and rulings reported in the Talmud itself; for the post-talmudic period, the responsa literature is a more reliable source for ascertaining the law intended for implementation than the other genres of halakhic writing. The responsa literature, which originated in the Geonic period, and has flourished ever since, consists mainly of legal opinions issued in response to queries submitted by courts regarding cases before them. Over the years, a corpus of some 250,000 responsa has accumulated; part has been electronically indexed by the Bar Ilan Responsa Project. Another source of information about actual application of the law is extant records of the legal activity, judicial and legislative, of various communities (pinkasei hakehilot) from centuries past, as well as collections of extant legal instruments.

This wealth of legal material, virtually every layer of which refers to, comments on, or takes issue with earlier views, is adduced frequently in the chapters of this book. Invoking this literature underscores its vitality, and gives readers a sense of the ongoing halakhic conversation, to which scholars from all periods and from around the world have contributed. Readers are invited to work through and participate, in their own ways, in this continuing discussion.
Distinguishing features
1 Controversy

1 Introduction

Controversy pervades Jewish law. Not only is it the case that, with regard to almost every legal issue, opposed opinions have been voiced, but the halakhic literature is also replete with discussions about controversy.
and its ramifications. The self-awareness of the rabbinical authorities with regard to the pervasiveness of legal controversies is reflected in the adage “controversy is an inherent characteristic of the Torah.” “Controversy” is sometimes used to denote real-time debate and dialogue over a contentious question among those engaged in Torah study, during which the disputants attempt to persuade each other of the correctness of their respective views. This real-time debate is sometimes referred to as “the war of the Torah.” However, another sense of “controversy,” which will be our primary interest, refers to holding contradictory opinions after all such attempts to persuade the opposite side of the correctness of one’s view have failed.

This chapter will focus on rabbinical attitudes to controversy. It seeks to open a window onto the nature and centrality of controversy in the talmudic literature by presenting the sources and inviting the reader to be actively engaged in interpreting them and perhaps formulating his own readings, however novel. The material will be presented according to the logic of the sources themselves, and not in a linearly thematic fashion. The connections will become clear in due course, when all the pieces are in place.

As our discussion of controversy unfolds, we will move between two different planes of halakhic discourse. The first is that of the conceptual issues that arise from the phenomenon of controversy; the second that of the practical questions that arise in the wake of controversy. How is a ruling to be reached in case of a dispute? How should the individual conduct himself? How is the obligation to study the law to be fulfilled? How is legal uniformity to be achieved?

Although discussion about controversy occupies the halakhic mind, it is a cross-cultural concept, and thus, it is possible—and perhaps, recommended—to analyze controversy in universal rather than exclusively Jewish terms. Readers should bear this in mind, and are invited to relate the concepts that appear in the halakhic sources to more general philosophical categories.

2 See R. Israel Isserlein, Trumat Hadeshen, Pesakim Ukhtavim #238.
3 See, e.g., Sifre Deuteronomy, Haazinu (Finkelstein edition, p. 370): “And Scripture states, “All of them valiant, wagers of war” (II Kings 24:16). Now what valor can people who are going into exile display? And what war can people wage when they are fettered in shackles and bound by chains? Rather, “valiant” refers to those who are valiant in Torah study. This is like the thrust of the verse, “Bless the Lord, O you His angels, valiant and mighty, who do His word … “ (Ps. 103: 20); “wagers of war”—who engaged in dialogue and debate [lit., give and take] in the war of the Torah, as it is said, “Wherefore it is said in the book of the Wars of the Lord” (Num. 21:14).”
2 Sources evincing a positive attitude to controversy

The talmudic sources manifest two distinct attitudes to controversy, one of which is clearly favored over the other. The preferred attitude views controversy in a positive light. Below, we will explore what this positive evaluation entails. For now, however, we will simply characterize it as a non-critical attitude. The other attitude is hostile to controversy, seeking to minimize it. On this approach, controversy is at best tolerated as a necessary evil, and not seen as a phenomenon to be encouraged and fostered. We will begin our examination with a discussion of sources that reflect the former attitude.

The first text we will consider is one of the seminal sugyot on controversy in the talmudic corpus. Though it is not presented as an introduction to talmudic legal thinking, it nonetheless serves, philosophically, to fulfill that role, by providing the background against which the phenomenon of controversy should be understood. Referred to endlessly in the post-talmudic literature, almost every aspect of the sugya has generated numerous interpretations. Our analysis will present a deconstruction of the text, revealing the internal tensions and oppositions it harbors.

2.1 bEruvin 13b

R. Abba stated in the name of Samuel: For three years there was a dispute between the house of Shammai and the house of Hillel, the former asserting, The law is in accordance with our views, and the latter contending, The law is in accordance with our views. A heavenly voice (bat kol) went forth, announcing, Both [lit., these and those] are the words of the living God, but the law is in accordance with the view of the house of Hillel. Since, however, both are the words of the living God, what was it that entitled the house of Hillel to have the law fixed in accordance with its view? Because they were kindly and modest, they studied their own views and those of the house of Shammai, and were even so humble as to mention the words of the house of Shammai before their own.

As may be seen from what we have learned: If a man had his head and the greater part of his body within the booth (suka) but his table in the house, the house of Shammai ruled it invalid but the house of Hillel ruled that it was valid. Said the house of Hillel to the house of Shammai, Did it not happen that the elders of the house of Shammai and the house of Hillel went on a visit to R. Johanan b. Hahoranit and found him sitting with his head and greater part of his body within the booth while his table was in the house? The house of Shammai replied, That constitutes proof?! [lit., from there proof?] They indeed told him, If you have always acted in this manner you have never fulfilled the
This teaches you that he who humbles himself, the Holy One, blessed be He, raises up, and he who exalts himself, the Holy One, blessed be He, humbles; from him who seeks greatness, greatness flees, but he who flees from greatness, greatness follows; he who forces time is forced back by time, but he who yields to time finds time standing at his side.

The style of the Hebrew in this sugya suggests to the trained eye that its origin is Tannaitic, despite the fact that the discussion is attributed to the Amoraim R. Abba and Samuel. And indeed, the kernel of the passage appears in the Jerusalem Talmud as a baraita:

It was taught: A heavenly voice went forth and announced: Both are the words of the living God, but the law is in accordance with the view of the house of Hillel.

jBerakhot 1:4 (3b)

Thus, the passage from bEruvin 13b is, at the very least, an Amoraic elaboration of this baraita.

The sugya describes a controversy between the house of Hillel and the house of Shammai, the only two distinct schools of thought in the long formative period of the Talmud. The life-span of these schools of thought was relatively short, just 80–90 years, but while they existed, the schools were a vital creative force, and had a tremendous impact on the subsequent development of the Talmud. The relations between the schools are sometimes described as violent to the point of bloodshed, but elsewhere are said to constitute a model of peaceful coexistence between sides to a dispute. More than 300 different controversies between the two schools, over questions pertaining to all aspects of daily life, are set out in the Talmud. The controversy described in our sugya is exceptional in that it does not identify the contested issue: no substantive dispute is mentioned, as would normally be the case. It seems, however, that the controversy had to do with the method by which controversies are to be resolved. (Philosophers would thus describe it as a 2nd-order controversy). There was, indeed, an accepted procedure for resolving controversies—the

4 I.e., “dwelling” in a booth on the festival of Sukkot; see Leviticus 23:42–43. The story of R. Johanan b. Hahoranit quoted here by the Talmud appears in mSuka 2:7 (bSuka 28a); it is also found in bBerakhot 11a. The version that appears in these two sources includes the words “and they said nothing to him” within the house of Hillel’s report on the visit. On this account, the controversy between the house of Shammai and the house of Hillel is not simply about assessing the permissibility of R. Johanan b. Hahoranit’s behavior, but also about the actual facts of the incident—what was said at the time. Textual analysis favors the version in bEruvin 13b, which is supported by the text of the Mishnah as it appears in the Jerusalem Talmud.

5 Hence, it is an early source.
majoritarian principle ("follow the majority"), but the question was how to define "majority": was the majority the camp that was greater in wisdom, or that which was greater in numbers? (The school of Hillel is said, in the Talmud, to have been greater in numbers, while the school of Shammai is said to have been greater in wisdom; each school apparently adopted the position beneficial to itself). In the absence of an agreed-upon mechanism for deciding controversies, the question remained open, and constituted a kind of vicious circle.

The significance of the duration of the controversy, which is not particularly exceptional, is not made clear. What is to be assumed, however, is that during this period there was not simply a stalemate, but new arguments were put forward by the sides, though to no avail—the question could not be resolvedrationally. The resort to the heavenly voice in this sugya suggests a certain resignation, a rejection of the possibility of arriving at an ultimate resolution of the impasse by means of human reason.

On the surface, it appears that the intervention of the heavenly voice is accepted without opposition. On this point, the sugya in bEruvin 13b conflicts with the picture painted in another classic talmudic sugya, "the oven of akhnai," where a similar halakhic pronouncement by a heavenly voice is rejected out of hand:

It has been taught: On that day R. Eliezer brought forward every imaginable argument, but they did not accept them. Said he to them: If the law is in accordance with my view, let this carob-tree prove it! Thereupon the carob-tree was torn a hundred cubits from its place—others affirm, four hundred cubits. No proof can be brought from a carob-tree, they retorted. Again he said to them: If the law is in accordance with my view, let the stream of water prove it! Whereupon the stream of water flowed backwards. No proof can be brought from a stream of water, they rejoined. Again he urged: If the law is in accordance with my view, let the walls of the house of study prove it, whereupon the walls started to tilt. But R. Joshua rebuked them, saying: When scholars are engaged in a halakhic dispute, what have ye to interfere? Hence they did not fall, in honor of R. Joshua, nor did they resume the upright, in honor of R. Eliezer; and they are still standing thus inclined. Again he said to them: If the law is in accordance with my view, let it be proved from heaven! Whereupon a heavenly voice called out, saying: Why do you debate with R. Eliezer, seeing that on all matters the law is in accordance with his view?! But R. Joshua rose to his feet and exclaimed: It is not in heaven (Deut. 30:12).

6 The discussion focuses on a dispute over a question of purity and impurity. The precise issue had to do with a specific kind of oven, hence, the sugya is known as the “oven of akhnai”; see mKelim 5:10 and mEduyot 7:7. R. Eliezer’s view regarding the purity of the oven is disputed by the Sages.
What did he mean by this? Said R. Jeremiah: [it means that] the Torah had already been given at Mount Sinai; we pay no attention to a heavenly voice, because Thou hast long ago written in the Torah at Mount Sinai, “Follow the majority” (Exod. 23:2). R. Nathan met Elijah and asked him: What did the Holy One, blessed be He, do in that hour? He replied: He smiled, saying, My sons have triumphed over Me, My sons have triumphed over Me.

bBaba Metzia 59b

The original Tannaitic tradition ends without taking a position on the question of who was right, R. Joshua, who rejects the heavenly voice, or R. Eliezer, who relies on it. It is only the later Amoraic insertion, “What did he mean by this? . . . over Me,” that makes it clear, by arguing that the Almighty Himself supports it, that the rejectionist view of R. Joshua takes precedence. A hint of irony is perceptible in R. Nathan’s remark here to the effect that there is heavenly support for a position that rejects divine intervention.

i Implicit critique of reliance on the heavenly voice

Returning to the sugya from bEruvin, note that after the heavenly voice has issued its decree, which will be discussed shortly, a question is raised:

Since, however, both are the words of the living God, what was it that entitled the house of Hillel to have the law fixed in accordance with its view?

This question seeks a rational explanation for the fact that the law follows the house of Hillel, pointing to dissatisfaction with the concept of heavenly intervention in halakhic decision-making. The answer given in the text, “because they were kindly and modest, they studied their own views and those of the house of Shammai, and were even so humble as to mention the words of the house of Shammai before their own,” appears to be straightforward: the members of the house of Hillel were morally superior.

But as R. Joseph Caro asked, “I am perplexed. Suppose the law was not [really] in accordance with their view. Would it have been the case that the law was nonetheless decided in accordance with their view due to the preponderance of their moral virtues?” While it seems that the moral dimension is indeed being highlighted here, and in the continuation of the sugya, a more penetrating insight is also expressed. Epistemic advantages resulted from the house of Hillel’s elevated moral standing: because they were humble, they were willing to listen to and reflect on the arguments put forward by their opponents; having withstood the encounter with these contrary views, their own arguments are stronger.

7 Halikhot Olam, gate 5, p. 101.
This interpretation is supported by the Jerusalem Talmud, which brings an unequivocally epistemic answer to the question:

Why did the house of Hillel merit having the law decided in accordance with their view? Said R. Judah b. Pazi: They quoted the opinions of the house of Shammai before their own. Furthermore, when they saw merit in the opinions of the house of Shammai, they retracted their own.

JSuka 2:8 (53b)

Thus, a rational explanation is put forward for the fact that the view of the house of Hillel is preferred. We see, then, that there appears to be a certain gap between the external appearance of the text of bEruvin 13b, which accepts the intervention of the heavenly voice without protest, and the subtle criticism implied by its undertaking to provide a rationalization of the “but the law is in accordance with the view of the house of Hillel” ruling.

ii The precedent

To illustrate the moral and epistemic qualities attributed to the house of Hillel, the text in bEruvin cites a mishnaic passage:

As may be seen from what we have learned: If a man had his head and the greater part of his body within the booth (suka) but his table in the house, the house of Shammai ruled it invalid but the house of Hillel ruled that it was valid. Said the house of Hillel to the house of Shammai, Did it not happen that the elders of the house of Shammai and the house of Hillel went on a visit to R. Johanan b. Hahoranit and found him sitting with his head and greater part of his body within the booth while his table was in the house? The house of Shammai replied, That constitutes proof?! [lit., from there proof?] They indeed told him, If you have always acted in this manner you have never fulfilled the precept of suka.

The illustration is relevant to the third virtue mentioned in explanation of the fact that the house of Hillel is favored, namely, that they mentioned the words of the house of Shammai before their own. But what precisely is the connection? It might be thought that the mishnaic passage is adduced here because of the conversation between the house of Hillel and the house of Shammai: in the question posed by the former, the phrase “house of Shammai” is used before the house of Hillel mentions itself: “Did it not happen that the elders of the house of Shammai . . .?”

But with all due respect, this explanation, put forward by Rashi and other commentators, is not fully satisfactory, since the commended quality
is that the house of Hillel mentioned the opinions [lit., the words] of the house of Shammai prior to their own. The sentence in question, however, merely constitutes an instance where the phrase “house of Shammai” appears first.

A better explanation, then, might be that, on the assumption that the mishnaic passage originates in the house of Hillel, the connection seems related to the fact that the view of the house of Shammai is reported before that of the house of Hillel: “the house of Shammai ruled it invalid but the house of Hillel ruled that it was valid.” But the question arises, why is this particular mishnaic passage, out of hundreds of possibilities, used to illustrate the point? After all, the norm in the Mishnah is that the view of the house of Shammai is mentioned first.

One possible answer is that the choice of this passage as an illustration is quite deliberate. R. Abba,8 who presents the passage declaring that the law is decided in accordance with the house of Hillel, remarks elsewhere in the Talmud (bSuka 28a) that in the case of the suka dispute adduced in discussing the virtues of the house of Hillel, the law is decided in accordance with the view of the house of Shammai. Thus, it would appear that in choosing this example, a veiled qualification to what is presented as a universal principle—the principle that the law is in accordance with the view of the house of Hillel—is in fact being articulated, namely, that it is subject to exceptions.

iii “Both are the words of the living God”

Having given the reader a taste of the subtle differences of opinion that are hidden beneath the apparently calm waters of the text, we now turn to the primary focus of the sugya, the ruling issued by the heavenly voice.

A heavenly voice (bat kol) went forth, announcing, Both [lit., these and those] are the words of the living God, but the law is in accordance with the view of the house of Hillel.

The dictum “both are the words of the living God” is derived from a verse in Jeremiah. There, the verse appears in the context of a polemic against false prophets. Jeremiah emphasizes that the true God has but one voice, and that false prophets “pervert the words of the living God” (Jer. 23:26). The author of the sugya thus takes the biblical phrase out of its context and clothes it with a new—and incompatible—meaning. In bEruvin, the Sages present God pluralistically, as speaking with a variety of voices, despite the fact that in the Bible, the position of the prophet is the very opposite.

Note the determination on the part of the Sages to reframe the biblical attitude pluralistically: the sage seeks to establish his authority by

8 In variant texts a different name is given.
repudiating the view that God’s voice is monolithic—a view welcomed by
the prophet—attesting to an ongoing polemic against the prophet’s
attempt to monopolize the role of conduit of God’s word.

This impression is reinforced if we consider another passage from the
Talmud pertaining to controversy, where the same stratagem is employed.

The school of R. Ishmael taught: “And like a hammer that breaketh the
rock in pieces” (Jer. 23:29): just as a hammer breaks forth many sparks,
so every single word that went forth from the Holy One, blessed be
He, split into seventy languages.9

bShabat 88b

Here, the allusion is to the same chapter of Jeremiah, where false prophecy
is assailed, and here too, it is taken out of context and given an entirely
new meaning, a meaning quite different from the biblical meaning. In
Jeremiah 23:29, after the false prophet is contrasted with the prophet who
reports God’s word faithfully, God declares: “Behold, My word is like fire,
and like a hammer that shatters rock!” Jeremiah is again asserting that
God’s word is monolithic and unfragmented. The exegete, however, uses
this passage to support a contrary vision, one that endorses controversy
and pluralism.

Even without regard to the innovative use of the biblical passage in this
particular context, and its ramifications, the dictum of R. Ishmael is another
classic expression of the pluralistic principle in Tannaitic thought, and is
much referred to in the post-talmudic literature. It also closely resembles a
phrase not found in the Talmud—“the Torah has seventy facets”10—which
became a maxim of the pluralistic approach.

The idea that the choice of the verses from Jeremiah in both instances
reflects a hidden polemic between the sage and the prophet, merits further
discussion. The distinction between the two is quite straightforward: the
prophet, but not the sage, has direct access to the word of God. It would
seem, on the surface, that as a result of this disparity, the position of the
sage is inferior. The contrast between the univocal voice of the prophet,
and the incessant controversies of the Sages, could be taken to demonstrate
such an inferiority. The alleged prophetic advantage is so pronounced that
R. Menahem Hameiri, the Meiri, sees the emergence of controversy as
caused by the cessation of prophecy.11 The resolve of the Sages to discredit
their alleged inferiority vis-à-vis prophets is thus understandable. The

9 The teaching of R. Ishmael here is far from clear. While the biblical verse speaks of a ham-
mer that breaks up rock, the exegete focuses on a different aspect of the blow—the sparks
it generates.

10 On the adage, “The Torah has seventy facets,” see Hananel Mack, “‘The Torah has sev-
enty facets’—the history of this expression” (Hebrew), Jubilee Volume for R. Breuer,

11 Beit Habeirah, mAvot, introduction.
most succinct formulation of this program is the dictum, “A sage is superior to a prophet” (bBaba Batra 12a).

The same idea is also found in the Jerusalem Talmud, in the very discussion which quotes the baraita that has been identified as the source of the “both are the words of the living God” dictum.

The prophet and the sage—whom do they resemble? A king sends supervisors (mefakhim) to one of his domains. Of one he wrote to the subjects in that domain: if he does not show you my seal, and my insignia, do not trust him; of the other he wrote: even if he does not show you my seal and my insignia, trust him. So with regard to prophets, He wrote, “and he give thee a sign or a wonder” (Deut. 13:2); but with regard to sages, “According to the law which they shall teach thee” (Deut. 17:11).

jBerakhot 1:4 (3b)

iv Meaning of the pluralism principle

The reader may be wondering how the principle can be understood, if taken literally—how can contradictory statements both be true? Addressing this concern, at least four meanings have been proposed for the principle, which we will call the pluralism principle:

a The law of contradiction does not apply to God

On this approach, the criterion of truth, that is, the concept of what truth is, is not uniform, but differs for God and for mankind. God is not subject to the law of contradiction. From the point of view of God, both a statement and its negation can be true. Thus each side to a halakhic dispute is indeed expressing the word of God.

This interpretation is reflected in the following commentary by the great medieval Spanish halakhist, R. Yomtov of Seville (Ritba):

Both are the words of the living God. The scholars of France, of blessed memory, asked, how is it possible that both are the words of the living God, when one forbids and another permits? They answered: When Moses ascended to heaven to receive the Torah, on every issue he was shown forty-nine aspects to forbid and forty-nine aspects to permit. He asked the Holy One, blessed be He, about this, and He said that the decision is delegated to the scholars of each generation, and the ruling will be made according to their view. This is so in terms of exegesis, but with respect to truth, there is an esoteric reason for all this.

Hidushei Haritba, bEruvin 13b

12 The reference is to R. Yehiel of Paris, died c. 1265.
Although, by virtue of this divine freedom from the law of contradiction, whatever decision a court renders is true, for the halakhic ruling of a court to be valid, it must be based on the assent of all the authorities of a given generation. While the truth of halakhic decisions is grounded in the premise that “both are the words of the living God,” the validity of human decision-making is not. Validity calls for consensual determination of the law by scholars. In this sense, the fact that the law of contradiction does not apply to God allows for a conception of ‘validity by convention’ in the human sphere, a recurrent theme in the halakhic sources.

There are a number of variants of this basic interpretation. Later on, we will explore a few of them, and the reader is advised to be alert to the subtle differences of nuance in the different variants.

b  Human rulings constitute partial perspectives on the divine truth

On this approach, the dictum “both are the words of the living God,” does not allow contradiction from God’s perspective, as the first approach suggests. On the contrary, from God’s perspective there are no contradictions, only imperatives and truths that apply universally. The perspective of the human attempting to determine the law, however, will necessarily be partial, as circumstances vary in space and time. Reality is so rich and complicated that more than one view is required if all the human perspectives are to be covered. From a given perspective, one view will be correct, while from a different vantage point, its negation may be correct. The correctness of a halakhic ruling will thus be relative to its author’s perspective.

This interpretation of “both are the words” can be found in Rashi’s comments on bKetubot 57a, where he distinguishes between controversies over historical facts about the tradition (Rabbi A said $p$ vs. Rabbi A said not-$p$) and controversies regarding halakhic positions ($p$ is correct vs. $p$ is incorrect).

When two Sages disagree concerning the view of a third, one saying, he said thus, and the other saying, he said so, one of the two must be uttering a falsehood; but when two Amoraim have a legal disagreement concerning monetary or ritual law, each adducing his own reasoning, there is no falsehood involved. Each of the two is putting forward his own argument, one providing reasons for permitting, and one reasons for prohibiting; one makes such an analogy, and the other makes a different analogy, and the principle of “both are the words of the living God” applies. Sometimes one argument is pertinent, and sometimes the other argument is pertinent, since the law’s rationale changes according to variations in the circumstances, however minute.

*Rashi, bKetubot 57a*
c  The motivational account

Weak version

The third interpretation refers to the motivation of the halakhic authority in question. There are two versions of this account: a weak version, and a strong version. On the weak version, only one of the opinions is correct; the formula “both are the words of the living God” signifies only that both views are sincere attempts to ascertain the truth. Accordingly, this view, like the ‘partial perspectives’ account, rejects the possibility that both views are true, and makes a claim regarding the motivations and methods of the proponents of the opposed views, namely, that they are legitimate. The correctness of the views themselves, however, is a separate question.

To illustrate this version of the third interpretation, we will examine the only other talmudic source for the expression “both are the words of the living God.”

Said R. Joseph: Can it be maintained that R. Eviatar is an authority who can be relied upon? Have we not, moreover, evidence to the contrary? [An instance where R. Eviatar is allegedly to have conducted himself not in accordance with a certain legal ruling is cited] . . . . Said Abbaye to him: Because a man does not know this rule of R. Isaac, is he therefore not to be counted a great scholar? If it were a rule established by logical deduction, we might think so. But it is purely a tradition, and it is a tradition that R. Eviatar had not heard.

Moreover, R. Eviatar is the authority whose view was recognized by his Master [in the following way]: Commenting on the text, “And his concubine played the harlot against him,” R. Eviatar said that the Levite found a fly [in food she prepared], and R. Jonathan said that he found a hair on her. Soon afterward R. Eviatar encountered Elijah and said to him: What is the Holy One, blessed be He, doing? and he answered, He is discussing the question of the concubine in Gibeah. What does He say? He said to him, My son Eviatar says this, and My son Jonathan says that. He [R. Eviatar] said to him: Can there possibly be uncertainty in the mind of the Heavenly One? He replied, Both are the words of the living God. He [the Levite] found a fly and excused it, he found a hair and did not excuse it.

R. Eviatar, a certain not particularly prominent Sage, issued a legal ruling. This sugya addresses the question of his authority. To establish R. Eviatar’s authority, one of the Sages discussing the matter introduces an episode in which R. Eviatar figures. The episode relates a controversy between R. Eviatar and one of his colleagues, R. Jonathan, concerning the historical facts pertaining to the biblical story of the concubine at Gibeah.

bGitin 6b
Controversy

(Judges 19). Her master’s wrath having been incited, the concubine, described as having “played the harlot,” fled, whereupon he went after her to bring her home. Since it is not permissible for a man to remain with his adulterous wife or concubine (a Rabbinic proscription, which the Sages, projecting backwards, apply to the concubine of Gibeah), the Sages attempt to interpret the story in a non-literal manner.

R. Eviatar argues that he must have found a fly in food she had prepared for him, while his colleague postulates that the husband must have objected to a hair, that is, found her sexually unattractive. At this point in the narrative, R. Eviatar encounters Elijah the Prophet, the traditional divine messenger, and seizes upon this opportunity to ask for a report on God’s doings. To his astonishment, Elijah tells him that God is engaged in studying the biblical story of the concubine at Gibeah.

The Midrash dramatically conveys R. Eviatar’s great suspense over whether God takes his view or that of his colleague. At last Elijah states, “both are the words of the living God”: while R. Eviatar was right about the fly, he was wrong about the causal question of what had incited the master’s wrath. Yet what is significant is that although his view is rejected, it is nonetheless considered to be “the words of the living God,” attesting to the intentions and reliability of R. Eviatar. This thus constitutes evidence that he is recognized as an authority on halakhic questions.

Strong version

The strong version of the motivational account rejects the idea that there is a fact of the matter, that God gave explicit pronouncements regarding halakhic issues. On this view, in addition to the Torah, what was given at Sinai were the thirteen exegetical principles for expounding the law:

Therefore, it appears that the God, blessed be He, gave the Torah and the thirteen exegetical principles for its interpretation, [for the use of] every single sage, according to his intellectual capacity, provided that he occupies himself with it and studies it with all his might, without dereliction. And if it appears to the Sanhedrin, on the basis of the Torah and the exegetical principles, that a thing is pure, it is pure. And should a future Sanhedrin arise, to whom it appears that according to the Torah and the exegetical principles that very thing is impure, it will be impure. Because God, blessed be He, who gave us the Torah, made it dependent on the sages’ views, based on their perceptions. And

13 The Hebrew word for “play the harlot” (tizne) is derived from the word for food (mazon). This discussion alludes to a controversy found in mGitin 9:10.

14 Some of the commentators maintain that R. Eviatar is nonetheless correct in maintaining that her culinary sloth was causally related to the master’s wrath, arguing that his anger was cumulative, being initially precipitated by the fly, then compounded by the hair.
concerning this it is said, “And from Zion shall go forth the Law” (Isa. 2:3), meaning, an understanding of the Torah will go forth today that did not go forth yesterday.

R. Yomtov Lipmann Muhlhausen, \textit{Sefer Hanitzahon}, sec. 321

This strong motivational account of “both are the words of the living God” claims that if one works diligently within the correct methodological framework, whatever decision is reached is valid.

d \textbf{The instrumental account}

A fourth interpretation, like the second and third, rejects the notion that two opposed views can both be true. On this view, both can, however, nonetheless be described as “the words of the living God,” because even the incorrect view makes an essential contribution to determining the truth. Analysis of the incorrect view, and its ultimate elimination, is a necessary stage in the process of arriving at the truth.

This view is expressed in several post-talmudic sources.

They were all spoken by one shepherd, meaning that most times we gain a good understanding of something by considering its negation, and we cannot understand the matter on its own so well as by considering its negation. Therefore the Holy One, blessed be He, sought to endow us with dissenting opinions, in order that when we arrive at the true opinion, we will understand it thoroughly.

R. Abraham Akra, \textit{Meharerei Nemeirim} 17a, bHagiga 3b

The idea of arriving at the truth by means of a process of working through a number of conflicting opinions is dramatically illustrated by a sugya, perhaps the most tragic in the Talmud, relating the end of the relationship between R. Johanan and Resh Lakish.

One day there was a dispute in the study hall [between Resh Lakish and R. Johanan] regarding a sword, knife, dagger, spear, hand-saw and scythe—at what stage of their manufacture do they become susceptible to impurity? When their manufacture is finished. And when is their manufacture finished? R. Johanan ruled, when they are tempered in a furnace. Resh Lakish maintained, when they have been polished in water. Said he to him, A robber understands his trade. [R. Johanan is alluding to Resh Lakish’s impious past.] Said he to him, And in what have you benefited me? There [as a robber] I was called Master, and here I am called Master. By bringing you under the wings of the Divine Presence, he retorted. R. Johanan therefore felt himself deeply hurt, [as a result of which] Resh Lakish fell ill. His sister [R. Johanan’s sister, married to Resh Lakish] came and wept before
him: Forgive him for the sake of my son, she pleaded. He replied, “Leave thy fatherless children and I will preserve them alive” (Jer. 49:11). For the sake of my widowhood then. “And let thy widows trust in Me” (ibid.), he assured her. Resh Lakish died and R. Johanan was plunged into deep grief. Said the Sages, Who will go to ease his mind? Let R. Eleazar b. Pedat, whose legal teachings are very subtle, go. So he went and sat before him; and on every dictum uttered by R. Johanan, he remarked: There is a baraita that supports you. “[Do you think] you are, then, like the son of Lakisha? When I stated the law, the son of Lakisha would raise twenty-four separate objections, to which I gave twenty-four answers, which led to a fuller understanding of the law. All you say is, There is a baraita that supports you. Do I not know myself that my opinions are well-grounded?” He went on rending his garments and weeping, saying, Where are you, O son of Lakisha, where are you, O son of Lakisha? And he cried thus until his mind broke down. Thereupon the Sages prayed for him and he died.

bBaba Metzia 84a

Although other personal issues and emotions contributed to R. Johanan’s tremendous sorrow, this moving passage clearly conveys the deep distress caused by his loss of the study partner who had enabled him to gain a deeper understanding of the law. Critical feedback is presented as an essential element in arriving at the truth. More generally, forthright confrontation of contentious issues is not seen as a negative practice, but viewed favorably as having great epistemic benefit. This interpretation of “both are the words”—the idea that controversy is instrumental to arriving at the truth—is also expressed in numerous other halakhic sources.

v Scope of the pluralism principle

As we noted, the dictum “both are the words of the living God” appears only twice in the entire Talmud—once regarding the most central controversies in the Talmud, those between the schools of Hillel and Shammai, and once with regard to a minor controversy between peripheral Sages. From the overall perspective of the talmudic literature, all kinds of inferences can be drawn from the stark contrast between these two contexts. They can be seen as designating the poles of a continuum, implying that the dictum applies to all controversies in between, that is, to the entire spectrum of halakhic controversy. On the other hand, the second occurrence of the dictum can be construed as a comic parody, intended to critique the engagement of scholars in speculative fantasies about the minutiae of past events. On this reading, the sugya from Gitin is not to be regarded as legitimizing the application of the “both are the words” dictum to every halakhic controversy.
Indeed, on the question of the scope of the “both are the words” dictum, post-Rabbinic scholars express a wide range of opinions, one of which we will now consider.

And you should know that it is only within the sphere of controversy between the houses of Hillel and Shammai that the dictum “both are the words of the living God” applies. Because they were the first to engage in halakhic controversy, since prior to them there were no disputes about the Torah at all. And when the houses of Hillel and Shammai arose, their controversies were such that both views were “the words of the living God.” And it is inappropriate that Israel should descend [directly] from the lofty level of absence of controversy to a level where controversy occurs and one view is invalidated. And therefore the controversy between the house of Hillel and the house of Shammai was such that “both are the words of the living God.” And after this, common controversy began to occur.

Maharal, Beer Hagola, 1, p. 19

Note the singular status accorded controversy between the house of Hillel and the house of Shammai, and its role as a transitional stage in the historical evolution of the halakha, according to the Maharal. On this view, controversy between the house of Hillel and the house of Shammai reflects an element of the original idyllic situation in which there was no controversy, and all views put forward were correct, yet also reflects the unpleasant later reality of dissent. This view construes history as the unfolding of a divine plan, on which all events have a purpose. The controversy between the house of Hillel and the house of Shammai, with its unique logical status, serves to prepare future generations for the coming decline.

From this passage, it would seem that the Maharal’s assessment of controversy is unfavorable. However, elsewhere he expresses views more sympathetic to controversy, arguing that it enriches the halakha.

vi Theory and practice

We have seen that the function of the heavenly voice is to resolve the dispute, thereby serving as arbiter of how the individual is to conduct himself in practice. Yet if “both are the words of the living God,” why is it necessary to decide between the two opinions? Whichever is chosen, the individual will be acting in accordance with the divine command. And in fact, there are a number of traditions that allow individuals freedom of choice regarding which opinion they prefer to follow, provided they remain consistent. Most of the following sugya reflects this approach, thus disputing bEruvin 13b:
The law is always in accordance with the view of the house of Hillel, but he who wishes to act in accordance with the view of the house of Shammai may do so, and he who wishes to act in accordance with the view of the house of Hillel may do so. He who adopts the more lenient rulings of the house of Shammai and the more lenient rulings of the house of Hillel is a wicked man, while of one who adopts the restrictions of the house of Shammai and the restrictions of the house of Hillel, Scripture said: “But the fool walketh in darkness” (Eccles. 2:14). One should, rather, act either in accordance with the house of Shammai with respect to both their lenient and their restrictive rulings, or in accordance with the house of Hillel with respect to both their lenient and their restrictive rulings.

bEruvin 6b

We can easily detect a contradiction between the first statement, viz., that the law is always in accordance with the house of Hillel, and the statement that follows it, viz., that he who wishes to act in accordance with the view of the house of Shammai may do so, while he who wishes to act in accordance with the view of the house of Hillel may do so as well. The contradiction here is between two practical directives. In bEruvin 13b, by contrast, there is a tension between theory and practice: the heavenly voice preserves the conflicting views at the level of theoretical law, while providing a uniform norm governing practice.

The Talmud itself is conscious of this inconsistency in the directives of bEruvin 6b, and one of the solutions it proposes as a means of resolving it is to argue that the first reflects the situation after the intervention of the heavenly voice, while the second describes the situation prior to this intervention. Shortly, we will consider another solution to this difficulty.

Seeing as there are standard halakhic decision-making rules—the law follows the majority; regarding biblical controversies, the stricter view is followed, while regarding Rabbinic controversies, the lenient view is followed; and so on—why is it that these rules are not invoked to resolve controversies between the houses of Hillel and Shammai? One possible answer is suggested by Nahmanides:

And it can be said that … the controversy between the students of the house of Shammai and the house of Hillel is broad, and all the scholars of Israel are encompassed by it, and for them the Torah becomes like two sets of laws [lit., like two Torahs].¹⁵

Hidushei Haramban, bHulin 43b

¹⁵ As members of the scholarly community cannot be indifferent to the controversy, but must take a position, and, given the either-or nature of the controversy, no alternative position is possible, the community is in essence bifurcated—split into two legitimate camps. Hence, every individual can choose for himself which of the two he sides with. In that it divides the scholarly community so completely, the house of Shammi/house of Hillel controversy is a unique phenomenon in the history of Jewish law.
Nahmanides’ answer is that the standard decision-making rules apply to isolated controversies, whereas the controversies between the houses of Hillel and Shammai generated two autonomous orientations. However, this answer, as Nahmanides himself notes, is problematic, in that the Gemara in bEruvin 7a suggests that the either-or solution is applied to all controversies, not only to those between the house of Hillel and the house of Shammai.

If we take the idea of halakhic pluralism as reflecting an ontological state (interpretation 1 above), the law can be decided in more than one way because there is no one uniquely-correct answer to the legal question at hand. In this case, we have a tension between a theological consideration, namely, that the divine will, the halakha, can be carried out in a variety of ways equally acceptable to God, and the social desideratum of maintaining uniformity of practice.

In contrast, if we adopt one of the other three interpretations, on which halakhic pluralism does not reflect a true multiplicity of truths, but only a multiplicity of well-intentioned views, the dilemma does not arise, and the heavenly voice serves as a decision-making device, a device for identifying the opinion that reflects the one unique truth regarding the issue at hand, thereby both identifying the divine will and ensuring uniformity of practice.

In the next section, we will further examine sources that deal with the tension between theory and practice.

2.2 Four sources on the legal ramifications of controversy

Let us now survey four passages from the halakhic literature—mEduyot 1:5; jSanhedrin 4:2 (22a); Masekhtot Ketanot, Soferim 16, 5–6; and Hidushei Haritba, bEruvin 13b—that discuss the legal ramifications of controversy. Only the first, mEduyot 1:5, will be analyzed in detail, as it is the most direct and explicit reference to the legal ramifications of controversy.

i mEduyot 1:5

We now turn to the examination of a statement in which the Mishnah discusses its own methodology, one of the very few self-reflective statements found in the Mishnah. It is also one of the few mishnaic passages that discuss the issue of controversy directly.

And why do they record the opinion of the individual against that of the majority, since the law may only be decided in accordance with the opinion of the majority? So that if a court approves of the opinion of the individual it may rely on him.

mEduyot 1:5
Above, we concluded our discussion of bEruvin 13b by juxtaposing it to bEruvin 6b, and noting that two different strategies are proposed for addressing controversy in the practical realm: the disjunctive, either-or, solution, found in the latter part of 6b, and the heavenly voice solution, which sanctions one particular course of behavior, eliminating all others, found in 13b. The Mishnah we have just quoted puts forward an intermediate strategy. On the one hand, as in the case of bEruvin 13b, there is indeed a single acceptable opinion, that of the majority. However, the repudiated opinion, that of the minority, is not completely effaced, but rather preserved for future reference, allowing for its eventual adoption. Thus this intermediate strategy sanctions possible implementation of dissenting views, but unlike bEruvin 6b, does not legitimize them unequivocally.

tEduyot, which parallels mEduyot, contains an important qualification of the mishnaic ruling that minority views can be relied upon.

The law is always in accordance with the opinion of the majority. The opinion of the individual is recorded against that of the majority only to render it invalid. R. Judah says: The opinion of the individual is recorded against that of the majority only because the times may require it, and they may rely on it. And the Sages say: The opinion of the individual is recorded against that of the majority only because it might be that one declares something impure, and another, pure; one might declare it impure according to R. Eliezer. They will be able to say to him, you heard this according to R. Eliezer.

tEduyot 1:4

R. Judah stresses that reliance on a minority view is to be resorted to only because “the times may require it.” This qualification, though not explicitly articulated as an element of the Sages’ view in the Mishnah (which parallels that of R. Judah in the Tosefta) is read into mEduyot, to the effect that the Sages too hold that a minority view may be relied upon only if the times requires it. There are, indeed, several instances in the Talmud where judges rely on minority views on the basis of mEduyot 1:5, understood in this qualified manner. The common formula introducing such cases is, “So-and-so deserves to be relied in times of exigency.” However, given that the definition of when an exigency exists is left to the judge who will be citing it as a justification, it is difficult to characterize the precise scope of the qualification.

However, if we consider the passages in question from another perspective, their relationship appears to be different. The three passages, bEruvin 13b, bEruvin 6b, and mEduyot 1:5, can be seen, not as two polar positions and a synthesis between them, but rather, simply as variants of the same position. bEruvin 6b can be read, not as an alternative strategy for addressing intractable controversies, but rather, as an interpretation of
bEruvin 13b. Like bEruvin 13b, it determines that the law is decided in accordance with the view of the house of Hillel (the first part of 6b), and interprets the “both are the words” dictum of 13b as sanctioning the disjunctive, either-or solution. On this reading, mEduyot 1:5 presents a means of implementing this paradoxical affirmation of the two approaches, the heavenly voice approach, on the one hand, and the either-or approach, on the other. But rather than presenting the solution as leaving the choice to the individual, as proposed in bEruvin 6b, it mandates that the rejected opinion be preserved for future judicial reference. Thus interpreted, mEduyot, too, sanctions the “both are the words” dictum.

The following Mishnah, which is, perhaps, the most renowned mishnaic discussion of controversy, and has generated a huge sea of commentary, can also be interpreted as in line with the view that the various sugyot should be regarded as complementary.

Every controversy that is for the sake of heaven, its end is to be sustained. And every controversy that is not for the sake of heaven, its end is not to be sustained. What controversy is for the sake of heaven?—the controversy between Hillel and Shammai. And that which is not for the sake of heaven?—the controversy of Korah and all his congregation.

mAvot 5:17

Although rather than referring only to the dissenting side, this Mishnah uses the more inclusive term “controversy,” it nonetheless presumably seeks to encourage the losing party, and not both sides to the dispute. The Meiri was also sensitive to the peculiar language of mAvot, in referring to “controversy” as being sustained in the end.

It is puzzling: in what way is it apt to say of a controversy that it will be sustained? After all, only one of the two opposing views will ultimately be sustained. And the term “controversy” covers two sides, and how can both be sustained? It seems to me that the term “controversy” [here] refers only to the side challenging an existing view…. Therefore, “controversy” does not encompass both sides, but only one, namely, that which challenges an existing view.

Beit Habelhira, mAvot 5:19

In the Meiri’s view, the Mishnah envisages that eventually, only one view will be sustained, namely, the view of the challenger. However, contra the Meiri, in the spirit of mEduyot 1:5, which states that dissenting views might be relied upon by a court, under specified conditions, at some future

16 The reference here to 5:19 rather than 5:17 is due to the fact that there are several different arrangements of the verses and chapters of mAvot.
time, we can suggest that the mAvot is likewise envisaging a point in the future when the challenging view will—alongside the majority view—be relied upon.

The claim that the Mishnah refers only to the losing party, assuring him that if he disagrees for the sake of heaven, his opinion will eventually be relied upon, is supported by the fact that the latter part of the Mishnah refers explicitly only to one side, the dissenting side, namely, to Korah and all his congregation. It might be asked why, if this is so, the penultimate sentence mentions both the house of Hillel and the house of Shammai. The answer is that with respect to certain issues, however few, the former are on the dissenting side, and with respect to the others, the latter.

The Mishnah we have just examined points to a problem also found elsewhere, the ambiguity of the very term “controversy.” It is sometimes used to denote a halakhic controversy, that is, a dispute over how to decide the law. This is the sense in which we have been using it. In other contexts, however, it can refer to social strife. Since, in this latter sense, controversy is unquestionably a deplored phenomenon, the fact that the same term is used for both is not without consequences, as the pejorative connotations of this sense of the term are sometimes carried over into contexts where the former, neutral sense is intended.

At times, it is unclear which of the two senses is intended. mAvot 5:17 is an example of such a context.

ii  jSanhedrin 4:2 (22a)

Said R. Yanai, Were the Torah to have been handed down in a clear-cut form, one would have had no solid ground to stand on. What is the basis for this statement? Scripture says, “And the Lord spoke to Moses . . . .” Moses said to Him, Master of the Universe, tell me how the law is decided. He said to him, “follow the majority” (Exod. 23:2). If those who declare [the accused] innocent are in the majority, declare him innocent. If those who declare [the accused] guilty are in the majority, declare him guilty. This is so that the Torah may be expounded in forty-nine ways for a decision that something is impure and in forty-nine ways for a decision that it is pure. And forty-nine is the numerical equivalent of “and his banner” (vediglo) (Song of Songs 2:4).17

iii  Masekhtot Ketanot, Soferim 16, 5–6

R. Tanhum b. Hanilai said: Were the Torah to have been handed down in a clear-cut form, no judge would have had solid grounds for his ruling. But now, if he renders a thing impure, there are others who rendered it impure under similar circumstances. And if he

17 By adding the numerical values of the letters (6 + 4 + 3 + 30 + 6).
renders it pure, there are others who rendered it pure under similar circumstances.

iv  

**Hidushei Haritba, bEruvin 13b**

Both are the words of the living God. The scholars of France, of blessed memory, asked, how is it possible that both are the words of the living God, when one forbids and another permits? They answered: When Moses ascended to heaven to receive the Torah, on every issue he was shown forty-nine aspects to forbid and forty nine aspects to permit. He asked the Holy One, blessed be He, about this, and He said that the decision is delegated to the scholars of each generation, and the ruling will be made according to their view. This is so in terms of exegesis, but with respect to truth, there is an esoteric reason for all this.

We have considered four sources that address the practical implications of controversy for halakhic decision-making: mEduyot, jSanhedrin, Soferim, and Hidushei Haritba. Despite some similarities of theme, there are also important differences. According to the pluralism principle, both sides of every dispute were given to Moses at Sinai. The sources in question all draw different conclusions from the pluralism principle. mEduyot deals with the conscious employment of a minority view by a judge. The Jerusalem Talmud, in jSanhedrin, sanctions any decision of an assembly of sages. The passage from Soferim justifies any decision made by a judge, and the Ritba goes one step further than the Jerusalem Talmud, saying that each generation can make decisions anew.

2.3  

**bHagiga 3b**

And he too began to expound: “The words of the wise are as goads, and as nails well planted are those of masters of assemblies; they were given from one shepherd” (Eccles. 12:11). Why are the words of the Torah likened to a goad? To teach that just as a goad directs the cow along the furrow in order to bring life to the world, so the words of the Torah direct those who study them from the paths of death to the paths of life. But [should you think] that just as a goad is movable, so the words of the Torah are movable, therefore Scripture says: “nails.” But [should you think] that just as a nail diminishes by being driven in, and does not increase, so too the words of the Torah diminish, and do not increase, therefore Scripture says: “well planted”; just as a plant grows and increases, so the words of the Torah grow and increase.

“Masters of assemblies” refers to the scholars (*talmidei hakhamim*) who sit in various assemblies and apply themselves to the Torah; some deem a matter impure, others deem it pure, some prohibit, others permit, some disqualify, others declare fit. Lest someone say, Under
these circumstances, how can I learn the Torah?, therefore Scripture says: All were given from one shepherd. One God gave them, one leader uttered them from the mouth of the Master of all deeds, blessed be He, as it is written, “And God spake all these words” (Exod. 20:1). So let your ears be as funnels [lit., hoppers], and cultivate an understanding heart, to hear the words of those who deem a matter impure and those who deem it pure, those who prohibit and those who permit, those who disqualify and those who declare fit.

Based on a verse from Ecclesiastes, this exegesis, also referred to in the passage we considered above from Meharerei Nemeirim, which has many parallels and variants in the Rabbinic literature, is attributed to R. Eleazar b. Azariah, to whom the pronoun “he” at the beginning of the passage refers. We know that R. Eleazar b. Azariah was involved in the decision to declare the book of Ecclesiastes part of the biblical canon (mYadayim 3:5). Given that it justifies dissenting opinions, it is possible that the exegesis before us was delivered in connection with the deliberations on this matter, despite the fact that in the present sugya, bHagiga 3b, it is invoked in a different context.

The exegesis has two sections, the first dealing with the tension between the static and dynamic dimensions of the Torah, and the second dealing with controversy. We will be most concerned with understanding the latter section.

Let us begin our consideration of the treatment of controversy in this sugya by noting a variant in the Jerusalem Talmud that distinctly changes its meaning:

The term “assemblies” (asufot) refers only to the Sanhedrin, as it is stated in Numbers 11:16—“Gather (esfa) unto Me seventy men of the elders of Israel.” Another interpretation: “masters of assemblies”—that which is spoken at assemblies.

jSanhedrin 10:1 (28a)

This change allows the Jerusalem Talmud to avoid interpreting the verse in a manner that underlines the connection with controversy, and instead, to reframe the matter as pertaining to the activity of the Sanhedrin in general, and not necessarily to controversy.

Despite the Jerusalem Talmud’s preference for recasting the biblical term as referring to a specific forum, namely, the Sanhedrin, if we return to the text of bHagiga 3b, it is quite clear that the subject addressed is

18 “Assemblies” and “gather” share the same lexical root, as “f”.
19 This attitude may be related to the Jerusalem Talmud’s overall policy of minimizing pluralism and presenting a unified front; see H. Ben-Menahem, Judicial Deviation in Talmudic Law (Chur, Switzerland: 1991), ch. 4.
indeed controversy in general, as is evident, for one thing, from the term “assemblies,” emphasizing that many different forums for deciding the law are being referred to.

An observer of the activity taking place at these different gatherings would readily have discerned that “some deem a matter impure, others pure, some prohibit, others permit, some disqualify, others declare fit.” From the continuation of the sugya, it is evident that the opposed pronouncements relate to the same legal question, and not to different issues. It is not surprising, therefore, that the observer’s response to this bewildering profusion of controversy and discussion is to inquire, “Under these circumstances, how can I learn the Torah?” In variants of this passage, the query is sometimes posed differently—“Under these circumstances, whom shall we listen to?” (Midrash Tanhuma, Behaalotkha 15); “Why should we bother to learn the Torah?” (tSota 7:11–12).

The answer provided in the various parallels: “All were given from one shepherd. One God gave them, one leader uttered them from the mouth of the Master of all deeds, blessed be He,” is based on the verse from Ecclesiastes. Note that these parallels, when quoting the verse, add the word “all,” which does not appear in the biblical text. The verse in the Torah that serves as the proof-text for the entire passage reads: “for it is written, And God spoke all these words” (Exod. 20:1), and it would appear that this is the basis for the emphasis on “all.” The exegete does not directly address the observer’s perplexity, but instead reassures the observer by announcing that all the different views were spoken to Moses at Sinai. In so doing, this source invokes an idea very similar to the pluralism principle put forward in bEruvin 13b, “both are the words of the living God.” And indeed, many of the later commentators who quote the sugya from bHagiga interpolate this dictum into it, as if it were an integral part of the sugya. The sugya also calls to mind the “forty-nine aspects” idea expressed in jSanhedrin 4:2(22a), which we discussed above.

i Interpretations of the sugya

A noted late medieval commentator, R. Nissim Gerondi, the Ran, interprets this fascinating sugya as follows:

It is also said, “masters of assemblies” (bHagiga 3b). This refers to the scholars (talmidei hakhamim) who sit in various assemblies and apply themselves to the Torah. Some deem a matter impure, others deem it pure, some prohibit, others permit, some disqualify and others declare fit. Lest one say, under these circumstances, since some deem it impure and others pure, and so on, how can I learn the Torah?, Scripture teaches, “given from one shepherd” (Eccles. 12:11). One leader uttered them from the mouth of the Master of all, and so on. For it is said, “And God spoke all these words” (Exod. 20:1). And they interpreted
the word “all” as including even the opinions of those who did not arrive at the truth—all opinions were given at Sinai.

Now this matter needs some study. How can we say that both sides of a controversy were spoken to Moses by the Almighty? For example, Shammai and Hillel had a disagreement. Shammai says that the priestly portion must be donated from one kab of dough and Hillel says from two kab (mEduyot 1:2). Verily, one of these two opinions is true and the opposed view is not, yet how can it be maintained that an untruth was spoken by God?

But the matter is as follows: It is known that the entire written and oral law was transmitted to Moses, as it is stated in tractate Megila: R. Hiya bar Abba said in the name of R. Johanan: What is the meaning of the verse “and on them was written according to all the words” (Deut. 9:10)? It teaches us that the Holy One, blessed be He, showed Moses the “finer points of the Torah and the finer points of the Sages” and all the new points that scholars would formulate in the future. And what are they? Reading the Book of Esther. “Finer points of the Sages” denotes the controversies and dissenting opinions among the scholars of Israel. And Moses learned all of them from the Almighty, though without a decision on every particular point of contention. But He gave him a rule for recognizing the truth, and it is “aharei rabim lehatot”—follow the majority (Exod. 23:2), and “do not deviate from the words which they shall declare unto thee” (Deut. 17:11).

When dissent proliferated among the Sages, if it was one against many, the law was determined according to the majority. If many against many, or one person against another, the law was decided according to what seemed proper to the scholars of that generation, since the power to decide had been delegated to them. As it is said: “And thou shalt come unto the priests the Levites, and unto the judge that shall be in those days” (Deut. 17:9). Furthermore, there is the injunction, “do not deviate.” For authorization was given to the scholars of every generation to decide between dissenting opinions as they saw fit, even if their predecessors were greater and more numerous than they. For we were commanded to follow their wisdom, whether what they agree on is the truth or its converse.

And this is so in the controversy involving R. Eliezer the Great. As it is said in the discussion in tractate bBaba Metzia: R. Joshua rose to his feet and said, “It is not in heaven” (Deut. 30:12). What does “it is not in heaven” mean? It means that the Torah had already been given to Moses on Mount Sinai, and in it is written “follow the majority” (aharei rabim lehatot) (Exod. 23:2). To be sure, they were all aware that R. Eliezer’s view agreed with the truth more closely than did their

20 bMegila 19b.
21 bBaba Metzia 59b.
own, that its signs were all genuine and correct, and that the heavenly decision had been as he said. Nevertheless, they decided the law in line with their own consensus. Since their reasoning inclined them to deem the matter impure, even though they knew that this consensus was the opposite of the truth, they did not want to render it pure, and would have transgressed the words of the Torah had they done so, since their reasoning inclined them to render it impure. For the power to decide has been delegated to the scholars of the given generation, and whatever they agree upon is what God commanded.

*Derashot Haran*, #7

The Ran uses the concept “truth” in two distinct senses. The first is that of objective truth, which reflects the divine determination of the law; the second is that of validity, reflecting human decisions about the law, which do not necessarily coincide with the objective truth. The validity of a human decision rests on human understanding of the law taken in conjunction with the divine desire that human conduct be in accordance with human understanding.

But the Ran also emphasizes that every human understanding of the law was actually revealed to Moses at Sinai:

> It teaches us that the Holy One, blessed be He, showed Moses the finer points of the Torah and the finer points of the Sages and all the new points that scholars would formulate in the future. And what are they? Reading the Book of Esther. “Finer points of the Sages” denotes the controversies and dissenting opinions among the scholars of Israel.

That is, conceptually speaking, the function of human decisions as to the law, decisions made on the basis of the principle of majority rule, is to determine which of the existing views will be adopted in practice.

It is interesting to compare the Ran’s interpretation to an interpretation put forward by R. Menahem Mendel Haim Landau, a distinguished pre-war Polish halakhic authority.22

And it is in this spirit that we are to understand the passage in tractate bEruvin about the house of Shammai/house of Hillel controversy: “a heavenly voice (*bat kol*) went forth, announcing, Both are the words of the living God, but the law is in accordance with the view of the house of Hillel.” It is important to understand how two contrary opinions, one forbidding and the other permitting, can, with respect to the same matter, both be the words of the living God. And on this point see the comments in R. Yomtov of Seville’s novellae (*Hidushei Haritba*) ad loc.

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In the said passage, the Talmud raises a problem. “Since, however, both are the words of the living God, why was the house of Hillel entitled to have the law fixed in accordance with its view?” Note that the Talmud does not question the possibility of two contrary opinions both being the words of the living God.

But you must know and understand that halakhic truth is unlike the truth of arithmetic and geometry, wherein there is but a single correct solution. Rather, it is based on intelligence and reasoning, that is, it is as people understand it through their own cognition. And the Holy One, blessed be He, commanded in His Torah that when a matter in the laws of the Torah is too perplexing, we obey the decision of the court of that generation, which will inform us of the solution to which its understanding points. And, as no two individuals have identical intellects, and opinions of necessity will differ, even within the court itself, God, may He be blessed, commanded that we accept the opinion of the majority. If the majority view asserts that something is forbidden, it is the will of God, may He be blessed, that it be forbidden. However, should the majority of a court in a future generation be inclined to accept the previous minority opinion, and permit the matter, this would also be the will of God, may He be blessed, for Scripture says, “unto the judge that shall be in those days” (Deut. 17:9). And as Maimonides, of blessed memory, wrote, “If the high court arrived at a conclusion on the basis of the accepted exegetical principles as it saw fit, determining that the law was thus and rendering its legal decision accordingly, and then a later court contradicts it, the second court may contradict it and rule as it sees fit, for Scripture says, ‘and unto the judge that shall be in those days’ (Deut. 17:9). The sole authority is the judge of the present generation.”

And it is all for the same reason: the Torah chose a solution that is dependent on intelligible truth and variable opinion. For every point of view has some hold on human opinion, and even within an individual, opinions may vary. The Talmud relates, for example, that R. Meir was able to argue that an impure matter was pure, and could support his claim logically (bEruvin 13b). That is, he explained it so as to show that it was plausible. Hence, the arguments for purity and for impurity can both be grounded in reason. And everything that can be so grounded is the word of the living God, since He commanded us to listen to the arguments and reasoning of the court, to its understanding of the solutions to doubtful points concerning the precepts of the Torah.

Kuntres Pri Haaretz, p. 506 in Vayaas Avraham

The conception expressed in this passage is similar to that suggested by the Ran, but with one crucial difference. On both views, the halakhic decision made by the Sages on the basis of majority rule does not necessarily mirror the divine truth regarding the matter. And on both views, the divine will is that the Sages be the arbiters of the law. Thus the decision-making methods these thinkers champion are what we would today describe as process-oriented. The crucial distinction, however, is that according to *Kuntres Pri Haaretz*, there is no presumption that the different views were given to Moses at Sinai, and hence human intellectual creativity has, theoretically speaking, far greater importance. Logic and human reasoning alone suffice to guarantee the admissibility of a halakhic opinion that has the sanction of the majority.

**ii Other commentators on bHagiga 3b**

This problem was also taken up in a responsa by an eminent nineteenth century Iraqi halakhic authority, R. Abdallah Abraham Joseph Somekh:

Question: You asked about controversy between Sages, one forbidding, the other permitting—how could both views have been given to Moses at Sinai?

Answer: This is a very profound question, and we cannot get to the bottom of it, for even the early scholars, of blessed memory, could not master it. This question was asked by the scholars of France, of blessed memory, about the passage in tractate bEruvin 13b:

R. Abba stated in the name of Samuel: For three years there was a dispute between the house of Shammai and the house of Hillel, the former asserting, The law is in accordance with our views, and the latter contending, The law is in accordance with our views. A heavenly voice (*bat kol*) went forth, announcing, Both are the words of the living God, but the law is in accordance with the view of the house of Hillel. Since, however, both are the words of the living God, what was it that entitled the house of Hillel to have the law fixed in accordance with its view? Because they were kindly and modest.

R. Yomtov of Seville [Ritba], in his commentary on Eruvin, wrote as follows:

The scholars of France, of blessed memory, asked, how is it possible that both are the words of the living God, when one forbids and another permits? They answered: When Moses ascended to heaven to receive the Torah, on every issue he was shown forty-nine aspects to forbid and forty-nine aspects to permit. He asked the Holy One, blessed be He, about this, and He said that the decision is delegated
to the scholars of each generation, and the ruling will be made according to their view. This is so in terms of exegesis, but with respect to truth, there is an esoteric reason for all this.

That is what the Ritba, of blessed memory, wrote. A similar approach is taken by R. Nissim Solomon Algazi in *Yavin Shmua* (p. 81b), quoting [R. Samuel b. Moses Kalai’s] *Responsa Mishpetei Shmuel*, which brings an interpretation in the name of Rabbenu Hananel, of blessed memory:

Concerning “both are the words of the living God”—the interpretation is that the Holy One, blessed be He, related to Moses at Sinai forty-nine ways to render a thing pure and forty-nine ways to render the same thing impure, and did not decide, but left the decision to the majority, as it is written, “follow the majority” (Exod. 23:2).

And so it appears from the Gemara in tractate bHagiga 3b:

“Masters of assemblies” refers to the scholars (*talmidei hakhamim*) who sit in various assemblies and apply themselves to the Torah; some deem a matter impure, others pure, some prohibit, and others permit, some disqualify and others declare fit. Should one say: Under these circumstances, how can I learn the Torah? Therefore Scripture says: All “were given from one shepherd.” One God gave them, one leader uttered them from the mouth of the Master of all deeds, blessed be He.

There is thus clear proof in the Talmud supporting the assertion of the scholars of France and Rabbenu Hananel, of blessed memory, that the two opposed opinions were given to Moses at Sinai. As was also explained by the Shela [R. Isaiah Horowitz], of blessed memory, who begins by quoting R. Yomtov of Seville, then quotes the scholars of France, cites the said talmudic passage, and then states: “These authorities, of blessed memory, attested that all the disputes and contradictory opinions were given by one God, uttered by one leader” (*Shnei Luhot Habrit*, 25b). And consult the text. And the Hida, of blessed memory, offers three explanations:

About the saying, “both are the words of the living God,” the early scholars pondered the question, how is it possible that both are the words of the living God, since the one whose opinion is not affirmed as law did not speak correctly? The early scholars said that just as light cannot be discerned without darkness, and truth cannot be discerned without falsehood, so too in this matter the one cannot be understood unless it is juxtaposed to its opposite. Therefore God told Moses the opinions of those who acquit and those who find liable, and so on, for from the rejected opinion, the true opinion can be formulated and upheld. That is one answer.

And another one we learn from Rashi: sometimes one thesis is right and sometimes another, and it turns out that in any event a
rejected opinion might be correct under slightly different circumstances.\(^\text{24}\)

The third explanation is according to the scholars of France, namely, that the Holy One, blessed be He, gave Moses forty-nine reasons that it be pronounced pure, and forty-nine aspects for pronouncing it impure, and so forth, and told him that the law would be according to the agreement of the scholars of the given generation. Thus, all opinions are indeed the words of the living God.\(^\text{25}\)

And consult the text.

And what the Hida, of blessed memory, wrote in his second explanation, is based on what Rashi, of blessed memory, wrote in Ketubot, at the end of his comments:

But when two Amoraim have a legal disagreement concerning monetary or ritual law, each adducing his own reasoning, there is no falsehood involved. Each of the two is putting forward his own argument, one providing reasons for permitting, and one reasons for prohibiting; one makes such and such an analogy, and the other makes a different analogy, and the principle of “both are the words of the living God” applies. Sometimes one argument is pertinent, and sometimes the other argument is pertinent, since the law’s rationale changes according to variations in the circumstances, however minute.

That is what Rashi, of blessed memory, wrote. From this we learn that the Sages, of blessed memory, were right in saying, “Both are the words of the living God,” for even if one scholar rules to forbid or permit a matter, and the law is not so, nevertheless, the ruling is true and exists in the world, and was received by Moses at Sinai regarding a different situation. And it is correct to say that this opinion too is the word of the living God.

There are more explanations by later scholars, of blessed memory, but nevertheless this inquiry has not proven very satisfactory, and we do not possess the understanding to pursue it to its ultimate conclusion, because even regarding the explanation of the scholars of France, of blessed memory, the great scholar, the Shela, remarks: “This is remote from human cognition, and cannot be grasped by man unless accompanied by divine guidance and His true light.” He also says: “The explanations of the scholars of France, of blessed memory, do not give peace of mind, because they are not adequate. The mind will have rest only through the reasoning and secrets alluded to by the master [the Ritba].” Therefore we cannot delve any deeper into this question, or elaborate on it further. On a literal level, to bring some peace of

\(^{24}\) Rashi, bKetubot 57a s.v. ha ka mashma lan.

\(^{25}\) Petah Einayim, bBaba Metzia 59b s.v. im halakha kamoti.
mind, and in particular, in order to answer the queries of ordinary people, we have brought the three explanations, and they more than suffice for the purpose of this investigation. Let the wise man answer the queries of the curious, and in particular, cite the explanation of the scholars of France, which is the most satisfying of the three. But the essential explanation is arrived at by way of secrets, and none of us have any business delving into it.

*Responsa Zivhei Tzedek, YD #26*

This responsum displays a virtuosic grasp of the halakhic literature as well as a sophisticated sense of the complexity of the philosophical problems raised by the multiplicity principle. At the same time, it evidences unquestionable ambivalence, disquiet and even confusion regarding the best way of dealing with these issues. The responsum reflects a tension between the desire to find a satisfactory resolution for the dilemma, and awareness of the problematics attendant on such an endeavor. Particularly noteworthy is the responsum’s concluding sentence, which explicitly associates the principle that “both are the words of the living God” with the mystical realm, and advises ordinary people to keep their distance.

**2.4 Aggadic materials on celestial controversy**

We will conclude our analysis of the sources that manifest a positive attitude to controversy by considering a number of Aggadic passages that allude to controversy on high—that is, controversy between God and the “heavenly academy.” However we interpret this celestial metaphor, attribution of controversy to the heavenly sphere is indicative of the fact that controversy is not regarded as the result of human weaknesses and limitations, but rather, as an integral dimension of Torah study.

First of all, let us consider a fascinating Aggada about the death of Rabbah, after which we will look at some remarks on the story made by the Ran, R. Nissim Gerondi.

R. Kahana said: R. Hama, the son of the daughter of Hasa, related to me that Rabbah bar Nahmani died of persecution, information against him having been leaked to the state. Said they [the informers]: There is an Israelite who keeps twelve thousand Israelites from paying the royal poll-tax one month in summer and one in winter. A royal officer was sent for him, but did not find him . . . and he fled to Agama; there he sat upon the trunk of a [fallen] palm and studied. Now they were debating in the heavenly academy thus: If the spot preceded the white hair, he is impure; if the reverse, he is pure.26 If [the order is] in doubt,

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26 The reference is to the laws of leprosy, see Leviticus 13:10.
the Holy One, blessed be He, ruled, he is pure; while the entire heavenly academy maintained, he is impure. Who shall decide it?, they asked. Rabbah bar Nahmani will decide, for he has declared, I am pre-eminent in the laws of leprosy and tents. A messenger was sent for him, but the Angel of Death could not approach him, because he did not interrupt his study. In the meantime, a wind blew and caused a rustling in the bushes, which he imagined to be a troop of soldiers. Let this person [referring to himself] die, he said, rather than be delivered into the hands of the state. As he was dying, he uttered, Pure, pure! A heavenly voice cried out, Happy art thou, O Rabbah bar Nahmani, whose body is pure and whose soul hath departed in purity.

bBaba Metzia 86a

R. Nissim Gerondi comments as follows:

This narrative requires explanation. To be sure, no one doubted what had been imparted by God himself: He had declared it pure. They knew with certainty that this was the sole truth. If so, how could they argue that it was impure until they had no recourse but to seek the decision of Rabbah bar Nahmani? This narrative should be interpreted in accordance with what we have written. Although they knew that “a doubtful spot is pure,” they declared it impure, since the determination of the law, having been granted them when they were alive, was within their jurisdiction. And since their reasoning impelled them to declare it impure, it was fitting that it be declared impure, even though this contradicted the truth, because this position is dictated by human cognition. Even if the other position constitutes the objective truth, it is unseemly to act in accordance with it.

Similarly, the opponents of R. Eliezer did not declare the oven pure (bBaba Metzia 59b), despite the fact that a heavenly voice had been sent to them proclaiming the law to be in accordance with the view of R. Eliezer. And as in this case, they did not doubt the veracity of the heavenly voice, yet they nonetheless declared: the law is not from heaven.

Derashot Haran #5, version 2

The Ran alerts us to the connection between this Aggadic passage and the story we discussed above regarding the “oven of akhnai” controversy between R. Eliezer and the Sages (bBaba Metzia 59b). There, the controversy was decided against God, and in favor of the view of the Sages. Here too, ultimately, God’s view is rejected,27 and that of his opponents affirmed, although in this case He is opposed by a heavenly assembly, rather than by the Sages.

The story also serves to ground the claim that one who writes a document has no preferred status vis-à-vis its interpretation, and must defend his views along with all other opinions put forward.

The Maharam Mintz was asked whether the interpretation of those who had issued a writ of mediation was privileged. Distinguishing between a document and the intentions of its authors, he answered that their interpretation of the writ is not necessarily to be preferred. Were authors to have such a special status, he noted, this would certainly apply in the case of the Torah, yet we see from the story of Rabbah bar Nahmani that God Himself has no privileged status in interpreting the Torah, which he authored.

The Maharam Mintz’s invoking of the story of Rabbah bar Nahmani is a good example of how non-legal Aggadic material is adduced to draw conclusions regarding specific points of law. However, it should be also noted that not all the commentators accept the Maharam Mintz’s analogy between the Torah and human documents.

Let us now look at another Aggadic passage describing a heavenly controversy.

“And I will make thy spires of kadkhod” (Isa. 54:12)—R. Samuel b. Nahmani said: There is a controversy [over the meaning of kadkhod] between two angels in heaven, Gabriel and Michael. Others say, The dispute is between two Amoraim in the West [the land of Israel]. And who are they? Judah and Hezekiah, the sons of R. Hiya. One says it means onyx, and the other says, jasper. The Holy One, blessed be He, said unto them, Let it be as this one says, and as that one says.

bBaba Batra 75a

The Gemara reads the prophecy as referring to the rebuilding of Jerusalem: Isaiah is describing the precious stones out of which its walls will be constructed. The controversy is over precisely what kind of stone it is that will be used. This passage is relevant to our discussion because it recounts the story of a heavenly controversy, at least according to the first opinion quoted. But in addition, it is also relevant due to its presentation of the divine response to the controversy: God decides that the walls will be built of both types of stones (here kadkhod is interpreted, by a play on words, as meaning “this and that”). Note that the book of Isaiah pre-dates the Talmud, wherein the controversy is described, by many centuries. It is, then, highly significant that the outcome of the later controversy establishes the meaning of the much earlier biblical text. Resolution of the controversy here does not merely settle the question by making a choice between various possible interpretations, but actually generates the meaning.

28 Responsa Maharam Mintz, #100.
This prompts the question, what is the role played by controversy in the talmudic literature? On the one hand, controversy can be seen as an attempt to uncover the meaning of a given term, text or teaching; on the other, it can be construed as assigning meaning to these elements. Now literary theory distinguishes between two positions: the view that the text has a fixed meaning, to be uncovered by the reader; and the view that the text has no meaning prior to its interpretation. It is possible to detect echoes of these positions in the various passages we have considered thus far. For instance, recall the passage from the Jerusalem Talmud that recounts how Moses was given all the possible interpretations of the law—forty-nine aspects in favor and forty-nine against—at Sinai (jSanhedrin 4:2). Upon comparing it with the Aggadic passage we have just looked at, the contrast between these two positions vis-à-vis the assignment of meaning is quite pronounced.

Let us consider one more sugya that takes a stand on the meaning issue:

R. Judah said in the name of Rav, When Moses ascended on high he found the Holy One, blessed be He, engaged in affixing coronets to the letters. Said Moses, Master of the universe, who stays Thy hand?29 He answered, There will arise a man, at the end of many generations, Akiva b. Joseph by name, who will expound upon each tittle heaps and heaps of laws.

Master of the universe, said Moses; permit me to see him. He replied, Turn thee round. Moses went and sat down behind eight rows [of R. Akiva’s students] and listened to the discourses on the law. Not being able to follow their arguments, he was ill at ease; but when, upon coming to a certain subject, the students said to the master, Whence do you know it? and the latter replied, It is a law given unto Moses at Sinai, he regained his composure. Thereupon he returned to the Holy One, blessed be He, and said, Master of the universe, Thou hast such a man and Thou givest the Torah through me! He replied, Be silent, for that is what occurred to Me. Then said Moses, Master of the universe, Thou hast shown me his Torah, show me his reward. Turn thee round, said He, and Moses turned round and saw them weighing out his flesh at the market-stalls.30 Master of the universe, cried Moses, such Torah, and such a reward! He replied, Be silent, for that is what occurred to Me.

bMenahot 29b

29 According to Rashi, this is a description of Moses’ perplexity upon observing God affixing coronets to the letters of the completed Torah, that is, adding the small strokes (tagin) that serve as flourishes on certain letters. He questioned why the flourishes were needed, when all of mankind awaited the Torah.

30 R. Akiva died a martyr’s death at the hands of the Romans during the Hadrianic persecution; see bBerakhot 61b.
Having distinguished between uncovering and assigning meaning, we can distinguish between two conceptions of the relationship between the Torah and the sages. On one conception, the Torah, with all its detailed ordinances, was given to Moses, leaving the nation the humble task of discovering and applying it, whereas on the other conception, the Torah is continually being completed by human creativity and ingenuity.

Our final example of a celestial controversy comes from the post-talmudic literature. The fact that the post-talmudic literature uses the device of heavenly controversy, which is relatively rarely used in the Talmud itself, demonstrates that it is nonetheless viewed as a legitimate metaphor.

I also asked about the order of the passages in phylactery scrolls. My question was thus: I pray to You, great, mighty and awesome King, discerner of secrets, expounder of the recondite, guardian of the covenant and of loving-kindness, to increase Your loving-kindness toward us this day, and command Your holy angels to advise me regarding an uncertainty that has bewildered us with respect to the order of the passages in phylacteries. For some scholars say that the existential verses\textsuperscript{31} must be in the middle, and that if this order is changed, the phylacteries are invalid. Other scholars say that the passages should be in the order of their appearance in the Torah, and that if this order is changed, the phylacteries are invalid. Now, King of Kings, command Your holy angels to advise me in accordance with which view the law is decided, and whose opinion you favor.

And they replied: Both are the words of the living God, and as there is controversy below, so there is above. The Holy One, blessed be He, says that the existential passages should be in the middle, while the entire heavenly entourage says that they should be in the order of their appearance in the Torah. This is the meaning of the verse, “Through them that are nigh unto me I will be sanctified, and before all the people I will be glorified” (Lev. 10:3). This is His glory, to mention first the passage that attests to divine sovereignty.

R. Jacob of Marvège, \textit{Responsa Min Hashamayim}, #3

Without getting into the halakhic details pertaining to the issue described here, let us attend to the use of the expression “both are the words of the living God.” Though this expression is frequently used in the halakhic sources, here it has a special salience. Usually, the expression denotes, as we saw, the fact that equal merit is ascribed to both sides to a controversy. In bGitin 6b, the expression was intended almost literally, describing an episode where the views of both sides were uttered by God. Here, it is

\textsuperscript{31} That is, Exodus 13:11 and Deuteronomy 11:13, the verses traditionally known as existential (\textit{havaioth}), from the words “and it shall be” (\textit{vehaya}) with which they open.
intended more literally still, describing a heavenly controversy in which one of the sides to the dispute is God Himself.

3 Sources evincing a negative attitude to controversy

Before turning to sources evincing a negative attitude to controversy, let us consider an ambivalent source.

The incredibly erudite eighteenth century authority R. Haim Joseph David Azoulay (Hida) was asked about the enactment of the Sages mandating recitation of Abbaye’s account of Abba Saul’s order of the Temple service (bYoma 33a) in the morning prayers. The question arises because the view of Abba Saul on the matter is not accepted as the law. His answer evinces a certain ambivalence as to the value of controversy:

Thus I reply to you, my dearest friend, apple of my eye, to inform you that the main reason for the enactment of our predecessors mandating recitation of Abbaye’s recounting of the Temple service in the morning prayers, is to gain merit for the whole nation by reciting a passage from the Mishnah and Gemara. They chose this passage, which deals with the Temple sacrifices. And it is known from what is stated in the discussion in bEruvin 13b that all are “the words of the living God.” Relying on the scholars of France, R. Yomtov of Seville writes in his novellae [Hidushei Haritba] that the two contrary opinions are true. And Moses our teacher, may he rest in peace, asked the Holy One, blessed be He, But in accordance with whom is the law decided? and He answered that the decision is entrusted to the scholars of the given generation. Therefore, since such halakhic opinions are true, their recitation is tantamount to studying the Talmud. Even if they entail something not accepted as law, it does not matter, because this opinion is also true, and “both are the words of the living God.”

As an example, I mention the enactment to recite a chapter of the Mishnah, the fifth chapter of Zevahim, in the morning prayer. R. Joseph Caro writes in the name of R. Aaron Halevi that this chapter was chosen because it contains no controversy. And the pre-eminent scholar of the generation, R. Haim [b. Isaac] Alfandari, of blessed memory, in his glosses on [R. Haim b. Menahem Algazi’s] Bnei Hayai, notes that indeed, the chapter does not contain any controversy, but some of the laws mentioned there are disputed elsewhere by Sages of the Mishnah. R. Yomtov of Seville, of blessed memory, goes even further: “My teacher, may God protect and deliver him, said that the choice of this chapter rests on the fact that it contains no controversy, though not all of it is accepted as law. For example, it is said there that

32 Beit Yosef, Tur, OH 50.
33 R. Aaron Halevi.
the Passover sacrifice may be eaten until midnight, but we have a
tradition from our teacher Nahmanides that the law is according to R.
Akiva, who opines that it may be eaten all night, since his view is
supported by an anonymous Mishnah. Nevertheless, since the whole
chapter is presented without a dissenting view, it is more appropriate
for recitation than any other.”

So this chapter contains controversial material and not all of it is
considered law.

Similarly, I saw the comments of R. Shimon b. Tzemah Duran, of
blessed memory, who says that some Sages of the Mishnah disagree
with R. Ishmael regarding some of his rules. Nevertheless, since
we have the tradition that all are the words of the living God, it is all
true Torah, and a person discharges his duty to study Scripture,
Mishnah and Gemara by reciting it. Although in the opinion of R.
Jacob b. Asher (Tur) and R. Yomtov of Seville and their followers, the
baraita of R. Ishmael is recited in place of Gemara, in any event, it is
likely that the passage with Abbaye’s account is for the same purpose,
for which it is suitable even if not all of it represents the law, because
his reasoning is also true, since “both are the words of the living God,”
as explained.

Responsa Yosef Ometz, #51

The question under consideration in this responsum is why a Tannaitic
passage that does not reflect the law is included in the prayerbook. The
question is particularly acute given that the prayerbook is the quintessential
philosophical work in the Jewish tradition, and the passages chosen to be
included in it are by no means arbitrary selections. The Hida’s answer to
this question reveals a certain ambivalence about controversy. He begins
by asserting that the principle “Both are the words of the living God” is
best exemplified by choosing a passage that does not reflect the law. This
remark implies that he views controversy and differences of opinion as a
positive phenomenon. However, the Hida goes on to mention yet another
mishnaic passage that is part of the prayerbook, one which also contains
paragraphs that do not reflect the law, and asserts that it was chosen
precisely because it does not record any controversy between the Sages,
and thus, is most appropriate for recitation: “Nevertheless, since the whole
chapter is presented without a dissenting view, it is more appropriate for
recitation than any other.” We see, then, that the responsum reflects a
complex position which cannot be characterized as either positive or
negative. On the one hand, the Hida understands the value of embracing
a range of views, but on the other, he recognizes the potential social

34 Namely, mMegila, ch. 2.
35 Hidushei Haritba, Avoda Zara 18.
36 On Zevahim 5 (Maamar Hametz) and on the baraita of R. Ishmael.
dangers inherent in endorsing controversy. This ambivalence is itself a reflection of talmudic ambivalence about controversy. We will now turn to four Rabbinic sources—tSanhedrin 7:1; Sifre Deuteronomy 9:6; mEduyot 1:6; and mEduyot 8:7—evincing a clearly negative attitude to controversy.

3.1 tSanhedrin 7:1

Said R. Jose: Initially there was no controversy in Israel; but there was the court of seventy in the Hall of Hewn Stone, and the other courts of twenty three were in the towns of the land of Israel . . . if one needs a court, he turns to the court in his town; if there is no court in his town, he goes to a court near his town. If they [the court] had heard [a tradition], they told it to them [the litigants]; and if not, [the initiator of the action] and the most eminent member of the court go to the court on the Temple Mount. If they had heard, they told it to them; and if not, he and the most eminent of them go to the court on the Rampart. If they had heard, they told it to them; and if not, these and the others go to the court in the Hall of Hewn Stone…. If they had heard, they told it to them; and if not, they stand up for a vote; if the majority is for impurity, they declare it impure, if the majority is for purity, they declare it pure. From there the law originates and is disseminated in Israel. When there multiplied students of Shammai and Hillel who did not attend their teachers sufficiently, controversies multiplied in Israel, and the law became like two sets of laws [lit., two Torahs].

37 There are a number of variants of this Tosefta: tHagiga 2:9, jSanhedrin 1:4 (19c), bSanhedrin 88b.
What brought about the transition from the ideal situation to the non-ideal situation? The Tosefta suggests two different answers to this question, hinting that the passage may, in fact, be compiled from two separate texts.\(^{38}\) One answer is explicitly formulated at the very end of the passage: “When there multiplied students of Shamai and Hillel who did not attend their teachers sufficiently, controversies multiplied in Israel, and the law became like two sets of laws.” We will discuss this answer shortly; now we need only point out that it is also found as an independent baraita in bSota 47b. The second answer, which is only implied, attributes the emergence of controversy to the destruction of the Temple and the elimination of the high court in the Hall of Hewn Stone. On this explanation, the emergence of controversy is linked to the absence of a decisive high court capable of resolving all cases that came before it, thereby precluding controversy.

On either explanation, however, tSanhedrin provides a historical account of the emergence of controversy. That is, it regards controversy as a historical contingency rather than as inherent in the nature of the Torah. This type of attempt to explain controversy as a contingency, a historical accident, implies a critical attitude. This contrasts markedly with the accounts of controversy we saw above, in which controversy is presented as so inherently a part of Torah that it even occurs on high.

However, although the relationship between the two states, the ideal state and the later reality, is presented as straightforward, in another talmudic account of the same judicial process we can find evidence that some sort of controversy was not entirely unheard of even in the ideal state. Although its description of the early phases of the judicial process is indeed identical to that in tSanhedrin, when the stage is reached where the case is heard before the court on the Rampart, there is a marked discrepancy:

> And he [the most eminent member of the court] declared: Thus have I expounded, and thus have my colleagues expounded; thus have I taught, and thus have they taught.

bSanhedrin 88b

Whether or not this passage leaves open the possibility that this phenomenon also existed at the earlier stages in the judicial process, these lines clearly depict a situation where contending analyses of a legal situation are being put forward.

### ii Moral degeneration

Let us now take a closer look at the first explanation offered for the emergence of controversy, which, as we said, also appears elsewhere, as an independent baraita, prefaced by another remark:

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When the haughty of heart multiplied, controversy multiplied in Israel.39 When there multiplied students of Shammai and Hillel who did not attend their teachers sufficiently, controversies multiplied in Israel, and the law became like two sets of laws.

bSota 47b

The context in which this passage appears is a sugya that lists different types of decline in moral character.

It is clear here that controversy is perceived as an evil. What is not clear, however, is whether the emergence of controversy is being presented as a punishment for moral decline. Much depends on how we interpret the behavior of the students of Shammai and Hillel, who “did not attend their teachers sufficiently.” In this context, “attending” denotes activity necessary for the study of the law, a theme that recurs frequently in the Rabbinic literature. What is it, exactly, that the students are being charged with? On one interpretation, the students were unable to attend their teachers because of political upheaval that interfered with the development of close bonds with their masters, their teachers. That is, on this interpretation, controversy is perceived as an outcome of a historical contingency rather than as a punishment for wrongdoing.

On another reading, however, one that appears to be more in line with the context of the baraita, which lists various manifestations of social decline, controversy is seen as inflicted upon the nation as a result of the students’ moral deterioration.

**iii Adverse effects of controversy**

Having considered the factors put forward here as causes of controversy, let us now say a few words about the alleged result of its proliferation—“the law became like two sets of laws” [literally, like two Torahs]. Now what is the concern here? We can distinguish between two possible problems the baraita may be alluding to: sectarianism and doctrinal disagreement.

The following passage from the Mishnah describes types of halakhic controversies that are potentially divisive:

The house of Shammai permit the rival-wives to the brothers, but the house of Hillel prohibit it. If they [widows] had undergone the ceremony of halitza—the house of Shammai declare them ineligible for [marriage to] the priesthood, but the house of Hillel declare them eligible; if they had been taken in levirate marriage, the house of

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39 This additional sentence also appears in bHulin 7a, prefaced by “detenan” (for we have learned) which usually signifies that the quotation is of mishnaic origin. However, it is not in the Mishnah.
Shammai declare them eligible, but the house of Hillel declare them ineligible.

mJebamot 1:4

Although concerned about the potentially segregative effects of controversy, the Mishnah goes on to say that the feared outcome did not materialize:

Nevertheless, though one house prohibit what the other house allow, and one house declare unfit what the other house declare fit, yet the house of Shammai did not refrain from marrying women of the house of Hillel, nor the house of Hillel from marrying women of the house of Shammai. In spite of all the disputes regarding purity and impurity, in which one side declare pure what the other side declare impure, they did not refrain from making use of whatever pertained to the other in matters connected with purity.

To be sure, this idealized account is not corroborated by other traditions regarding the controversy between the two schools, which indeed confirm that the fears were not exaggerated. For example,

It was taught in the name of R. Joshua Onia, The students of the house of Shammai stood below and killed the students of the house of Hillel. It was taught, Six of them went up and the rest blocked their way with swords and spears.

jShabat 1:4 (3c)

This tradition can explain the great sensitivity of the Sages to the potentially dangerous social implications of controversy.

Concern over the proliferation of controversy is reflected in the punishment of the rebellious elder, which is mandatory and cannot be abrogated.

Come and hear. R. Josiah said: Three things did Zeira, an inhabitant of Jerusalem, tell me: If the husband renounced his warnings [to his wife whom he suspected of adulterous conduct], they are null; if the father and mother wished to pardon a stubborn and rebellious son, they may do so; and the court may pardon a rebellious elder, if it so desires. But when I went to my colleagues of the south, they agreed to the first two,

40 A parallel passage is found at the end of Megilat Taanit: “On the ninth of Adar, they decreed a fast, to mark the controversy between the house of Shammai and the house of Hillel, wherein three thousand of their students were killed.” And see bShabat 17a.

41 “Rebellious elder” denotes a judge who seeks a ruling from the high court in Jerusalem, and upon receiving it, rules otherwise in his own court; he is subject to capital punishment. See Chapter Four below, “Erroneous Rulings.”
but not to the rebellious elder, so that controversy would not increase in Israel. This is an irrefutable answer.

bSanhedrin 88a

Above, we noted that concern about controversy and its possible repercussions was, to some extent, also motivated by theological considerations. A remark in this vein is made, for instance, by the Ritba, in commenting on a key talmudic sugya dealing with controversy, bJebamot 13b-14a, part of which is discussed below:

Since you are the children of one Father and one God, it is proper that you not form factions, as if there were two Torahs and two deities.

Hidushei Haritba, bJebamot 13b

In any event, whether motivated by apprehension about adverse social or theological outcomes, fear that the law will become two distinct bodies of law is discernible as a thread running through the talmudic corpus alongside the voices in favor of tolerating, or even encouraging, controversy. The alleged deleterious consequences of controversy are seen as an argument for minimizing the degree to which controversy can have more than purely theoretical significance, that is, the degree to which it can be acted upon.

Averting controversy remained a priority in the post-talmudic era. This is evident from discussion of the talmudic sugya about an enactment concerning the precise procedure for blowing the shofar on Rosh Hashana.

R. Abbahu ordained in Caesarea that there should be a long blast (tekia), three short blasts (shevarim) [groans], one wailing blast (terua) and another long blast (tekia). How can this be justified? If the sound [required by the Bible] is a kind of wailing, then there should be tekia, terua and tekia, and if it is a kind of groaning, should there not be tekia, three shevarim, and tekia? He was in doubt whether it was a kind of groaning or a kind of wailing.

bRosh Hashana 34a

In addition to the non-disputed requirement of blowing tekia, R. Abbahu required that two additional kinds of blowing sounds be issued. Concerning this passage, R. Hai Gaon was asked how it could be that there was no clear tradition regarding the blowing of the shofar, which takes place every year.

Our master [R. Hai Gaon] of blessed memory, was asked: Should we assume that before the time of R. Abbahu, the [obligation to fulfil the] precept of blowing the shofar was not discharged? Apparently, the sound of the terua was subject to doubt among them, as it is said, “this
is surely a matter of controversy” (bRosh Hashana 33b), but there is no doubt that the issue must have been decided: Is it conceivable that they did not know the true procedure for a duty that had to be performed every year? Had they not seen how it was performed, each generation showing the next, one hearing the tradition from another, continuously, back to Moses our teacher, of blessed memory?

And our master, of blessed memory, answered that the terua as prescribed by the Torah is certainly discharged with either a wailing or a groaning blast, because the Torah intended that the terua be composed of sounds and broken blasts. And in earlier times it was performed either as broken blasts or as wailing; it was a matter of individual preference, and the duty was in any event discharged. This was known to the learned, but ordinary people mistakenly thought that there was a difference between them, and therefore that one or another group was not discharging its obligation with respect to the precept. So to dispel this view held by the ignorant, and in order to prevent the Torah from becoming like two sets of laws [lit., two Torahs], R. Abbahu ordered that both customs be followed, and added one more terua blast at his own initiative, because he resolved to establish the terua in every possible customary broken sound. Since simple folks thought that there was controversy among them over this, the Talmud presents this in the style of a debate, that is, with objections raised and a resolution offered.

Ritba ad loc., quoting a responsum by R. Hai Gaon

3.2 Sifre Deuteronomy 96–the injunction against factionalism

The normative formulation of the critical stance on controversy is the “do not form factions” injunction, the earliest source for which in the Rabbinic literature is Sifre Deuteronomy.

“Ye shall not cut yourselves” (lo titgodedu) (Deut. 14:1). Do not form factions, but be united, as it is written, “It is He that buildeth His upper chambers in the heaven, and hath founded His bunch42 on earth” (Amos 9:6).

Sifre Deuteronomy, Ree, 96 (Finkelstein edition p. 158)

The somewhat indefinite significance of this general injunction, which at first sight might seem directed against the formation of sects outside the halakhic framework altogether, is ultimately endowed with a well-defined halakhic meaning in a celebrated controversy between Abbaye and Rava:

Said Abbaye: The admonition against forming factions is only applicable to a case such as that of two courts of law in the same town,

42 The term for bunch, “agudato,” is in the singular.
one of which rules in accordance with the views of the house of Shammai while the other rules in accordance with the views of the house of Hillel. However, in a case of two courts of law in two different towns, it is irrelevant. Said Rava to him, surely the case of the house of Shammai and the house of Hillel is like that of two courts of law in the same town? Whereas, said Rava, the admonition against forming factions is only applicable to a case such as that of a court of law in a given town, part of which rules in accordance with the views of the house of Shammai while the other part rules in accordance with the views of the house of Hillel. However, in a case of two courts of law in the same town, it is irrelevant.

bJebamot 14a

This talmudic injunction is the subject of a tremendous amount of discussion and explication in the post-talmudic literature. The development of this discussion is too sweeping to be addressed here, and merits separate examination. Two central questions, on which much of the debate has focused, are the following. Does this injunction address the halakhic authority, or the individual? And with respect to the injunction, is there any difference between conduct grounded in custom (minhag) and conduct grounded in law?

3.3 mEduyot 1:6—rejection of minority views

Above, in exploring the positive attitude to controversy, we saw that mEduyot 1:5, manifesting a favorable attitude, presents the recording of minority views as a means of introducing some flexibility into the decision-making process, by empowering the judge to rely on a rejected minority view.

The contrary view, however, is also to be found there, immediately following that paragraph:

R. Judah said: If so, why do they record the opinion of the individual against that of the majority to no effect? So that if one should say, “I have received such a tradition,” another may say, “You have heard it only as the opinion of so-and-so.”

mEduyot 1:6

The position of R. Judah here\(^{43}\) is that the recording of minority views is motivated by the desire to strip them of any normative validity. This view is more pronounced in a variant reading of this Mishnah, which, instead

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\(^{43}\) The Tosefta records the same dispute, except that the positions expressed are reversed, with R. Judah upholding rather than disparaging controversy (tEduyot 1:4 [Zuckermandel edition]).
of construing the phrase “to no effect” as part of the question, sees it as part of the answer, reading it as, “To invalidate them!”

3.4 mEduyot 8:7—the eradication of controversy

We will conclude by looking at the final passage in mEduyot.

R. Joshua said: I have received a tradition from Rabban Johanan b. Zakai, who heard it from his teacher, and his teacher from his teacher, as a law given to Moses at Sinai, that Elijah will not come to pronounce impure or to pronounce pure, to send away or to bring near, but to send away those brought near by force and to bring near those sent away by force. The family of Bet Zerephah was on the other side of the Jordan, and Ben Zion sent it away by force; and yet another family was there, and Ben Zion brought it near by force. Elijah will come to pronounce such cases impure or to pronounce pure, to send away or to bring near. R. Judah says: to bring near, but not to send away. R. Simon says: to reconcile controversy. And the Sages say, neither to send away nor to bring near, but to make peace in the world, for it is said, “Behold I send to you Elijah the Prophet . . . and he shall turn the heart of the fathers to the children and the heart of the children to their fathers” (Mal. 3:23–24).

mEduyot 8:7

Here we see Elijah the Prophet in a role different from that which he played in the passages above. In those passages, he served as an intermediary between the heavenly and the mortal spheres, whereas here he represents the end of days, the ideal future that mankind hopes to merit. This Mishnah describes several views on the ways in which the world will be perfected, one of them being the elimination of controversy. Here, we must keep in mind the distinction discussed above between two senses of “controversy”—debate and social strife. However, it appears that in saying, “to reconcile controversy,” R. Simon is referring to controversy as debate.

4 Conclusion

Our examination of sources evincing a negative attitude to controversy opened with tSanhedrin, which described the idyllic past when there was no controversy, and ends with the messianic period to come, when there

44 This Mishnah is the basis for the popular understanding of the Aramaic word “teiku,” used to denote unresolved disputes in the Talmud, and derived from the word “kum,” to stand. On this popular conception, teiku is an acronym for tishbi [Elijah] yetaretz kushiyot ubneyot (Elijah will resolve difficulties and problems).
will once more be no controversy. The assumption underlying this utopian vision is that controversy is an unfortunate phenomenon. Human society, however, is not situated in these contention-free circumstances, but in historical eras that, as we have seen throughout this chapter, have been replete with controversy and differences of opinion. Mankind, with its limitations and failings, has become involved in controversy in the course of a sincere search for truth. The pragmatic wisdom of the Sages was, therefore, to accept the reality of controversy and not attempt to muzzle or deny it. Indeed, they had the perspicacity to view it as a positive, enriching, inspiring and engaging process that allowed all segments of the learned community to express themselves, as we have seen. The only constraint limiting debate pertained, not to the content of the views expressed, but to the modes of expression used. Civility, respect and a positive attitude to one’s interlocutors, both past and present, were put in place as safeguards that enabled dissenting views to remain within the collective discourse. Tolerance of controversy indeed attests to strength and self-confidence, and it is hoped that this tolerance will continue to characterize the Jewish scholarly community, in the future, as it has in the past, and to make itself felt even beyond.