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MAJORITY DECISION VS. INDIVIDUAL TRUTH The Interpretations of the "Oven of Achnai" Aggadah

INTRODUCTION

The story of Achnai's oven¹ opens with a *Mishnah* in Tractate *Kelim*.² There Rabbi Eliezer and the rabbis debate the "purity" of an oven made of rings in between which is filled with sand. Rabbi Eliezer ruled that it was pure while the rabbis held it was impure. Although Rabbi Eliezer advanced every possible argument in his favor, the rabbis refused to rule his way. Thereupon he tried to convince them by invoking a number of miracles. First he stated:

If the law is in accord with my views, let this carob tree offer testimony.

The carob tree was uprooted from its place and moved one hundred ells; others say four hundred ells. But the rabbis replied:

We adduce no evidence from a carob tree.

Then Rabbi Eliezer said:

If the law is in accordance with my views, let this water brook testify.

The water of the brook flowed in a reverse direction. Again the rabbis said:

We adduce no evidence from a water brook.

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Rabbi Eliezer said:

If the law accords with my views, let the walls of the academy bear witness.

The walls of the academy began coming together and were about to fall. Rabbi Yehoshuah rebuked them, saying:

If scholars debate an issue of law, what business is it of yours to intervene?

They did not collapse out of deference to Rabbi Yehoshuah, and they did not resume their straight position out of deference to Rabbi Eliezer; they remained in a bent position. Finally Rabbi Eliezer cried out in desperation:

If the Halakhah is as I say, let it be demonstrated from Heaven.

At that, a Divine Voice (*bat kol*) gave utterance:

Why do you disagree with Rabbi Eliezer. The Halakhah is always as he says it is.

Rabbi Yehoshuah then rose to his feet and exclaimed:

It is not in Heaven.³

The story continues with Rabbi Yirmiyah's answer to the question put by the Talmud⁴ as to the real meaning of Rabbi Yehoshuah's exclamation. His answer is two-fold: since the Torah has already been revealed at Sinai, no regard is to be paid to any Divine Voice: the Torah⁵ has already prescribed that one must abide by the majority.⁶

Reverting to the events of the day, the Talmud continues:

All objects which Rabbi Eliezer had ruled to be clean were brought and burnt, and then they resolved to excommunicate him.

Rabbi Akiba volunteered to go and inform Rabbi Eliezer of his excommunication, and the entire natural world was profoundly

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shaken by Rabbi Eliezer's anguish. Rabbi Gamaliel, however, was saved from the sea's rage by vindicating the excommunication — "So that strife shall not multiply in Israel" — although in the end he died because of Rabbi Eliezer's grief. The story concludes with the moral uttered by Rabbi Eliezer's wife (a sister of Rabbi Gamaliel's):

I have it as a family tradition that all gates are locked except the gate of grievously wounded feelings.

This concluding note links the whole story with the theme of denigrating another, in the course of which it figures in the Babylonian Talmud.⁷ This interweaving of the story leaves the impression that the editor wished to emphasize the wrong done to Rabbi Eliezer and the serious consequences of so hurting a person's feelings.⁸

II

In his *Talmudic Law and the Modern State*,⁹ Mr. Justice Silberg has observed that whilst this story has long impressed scholars and literary people with its beauty, it possesses more than literary elegance. He writes:

Here in this legend, as well as in the statement from the Palestinian Talmud quoted earlier, is disclosed to us the singular characteristic of Jewish jurisprudence. We have here the rule of law in its absolute sense, the rule of law over the one who decrees the law, the introduction of the lawgiver into the hierarchy of relationships, juridical and administrative, which were created by the law which He himself ordained. He heeds "the commandments of the Torah," that is to say, He takes on himself the discipline of the law and He submits to the authentic interpretation of the authorized interpreters. In other words, He accepts the discipline of the judgment pronounced by an authoritative body—the majority—which was empowered by Him for deciding doubtful cases, even though in this instance the doubtful case is for Him not doubtful at all. If the law is to follow a majority, one must act in accordance with this law, even if the one involved in litigation is the giver of the Torah Himself.¹⁰

The modern concept of the Rule of Law which Mr. Justice

Silberg has discovered is, as he says: "A mighty conception, mightier than can be grasped by our simple common sense."

Those engaged in philosophical speculation will almost inevitably select the complex of sources which will lend support to their own value judgments. And rabbinical legend is a fertile field for harvesting the most varied of crops. There are those students of the law of our own time, (most of them Jewish) who cite the legend of Achnai's oven to support their own views about jurisprudence. Edmond Cahn, for instance, describes the bitter and ultimately tragic dissension between Rabbi Eliezer and his colleagues as a joyful event when the sounds of hearty laughter echoed from Heaven,¹¹ because he believes that the story points out the moral that the individual has the right and duty to bear personal responsibility for his decisions. The judge must interpret the law as best as he can and no miraculous act can relieve him of the attendant responsibility.¹² By contrast, the Italian scholar, Ascarelli,¹³ finds in the story, and, in particular in the stand taken by Rabbi Yehoshuah and the others, support for his view that it is in the nature of statutory formulations not to be unequivocal: hence his conclusions that the task of the interpreter is always creative.¹⁴

Very frequently scholars directly engaged in Jewish studies in general and Jewish law in particular have drawn broad conclusions about the character of Judaism and Jewish law from *aggadic* material. This approach is very problematical, for to lay down general principles in these fields of study which involve selecting one or another source is not a satisfactory procedure. The entire range of the sources must be reviewed to establish convincingly that the source actually cited representatively exemplifies what is intended. And in this regard the historical and philological aspects of the material must not be overlooked.¹⁵

All this applies with equal force to the story of Achnai's oven. It furnishes no ground for any far-ranging conclusions regarding the existence of the democratic idea in Judaism. Nor does it provide certain and sufficient foundation for the view of Mr. Justice Silberg about the prevalence of the rule of law in the Jewish legal system.¹⁶ Characteristically, it has also

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been said, that the story in fact clearly manifests an anti-authoritarian stream in Jewish thought.¹⁷ Even if "a stream in Jewish thought" is very cautious of expression, not presuming to lay down any general proposition, the conclusion itself is not to be accepted as determinative unless it rests on foundations which are secure and firm in point of history and philology.¹⁸

These misgivings as to methodology, elementary though they may sound, are only intended to suggest the purpose of this note. It is not to examine the substance of the story from the historical, philological or any other aspect. Nor is it to deduce or to stress any philosophical idea. Quite another end is in mind. The tale, as reported in the Talmud, is replete with tension. It is profoundly thought provoking and cries out for exegesis. Not unexpectedly, Jewish scholars through the ages have responded to the challenge which it presents. And it is this response which concerns us here. The pluralism in matters of faith and doctrine which has prevailed in halakhic Judaism renders the varying and often inconsistent interpretations of the story a matter of no very great surprise. But common to them all is the premise that the Halakhah is a living law and the Talmud in all its variety the authentic expression of Judaism. Professor Urbach has observed that

the sayings of the sages were accepted by following generations as a supreme authoritative source not to be questioned, but the freedom to expound the truth contained therein lent itself to a variety of possibilities. The philosophers of medieval times, the Kabbalists and the Hasidim, all base themselves on the sayings of the sages in expounding their own systems of thought. But because for them the system of thought was primary, they dimmed and detracted from the original import of these sayings, especially because the modes of expression and the literary form of the sayings made them like a tree of abundant fruit.¹⁹

While sayings of the sages were regarded as an authoritative and binding expression of Jewish thinking different interpretations were made in future generations as the sayings were retold. The story of Achnai's oven is an example. The group of interpreters who addressed themselves to the story grew. Not only those who found in it support for their own views but also

those — and perhaps particularly those — who found it difficult to reconcile the story with their personal outlook have felt the need to interpret the story, each in his own fashion. Very clearly individual values turned the story into statements of personal philosophy. The starting point, historically, should have been the personality of the interpreter in the context of his time and place. But the opposite course will be taken here. We shall examine the different views of the story taken by Jewish scholars. In so doing we shall not only have displayed before us the varying approaches to a number of problems which the story presents but shall also be able to gauge the vast range of meaning which words embrace and learn something of the manner in which the rabbis have regarded *Aggadah*.

Obviously, the present investigation is not exhaustive of all the views. We have endeavored to collect most of the printed sources and extract the more important ones.²⁰ Many of the details of the story served as texts for commentary in succeeding generations. Three aspects, however, have gained particular attention:

1. the conflict between a Divine Voice and a majority decision of the rabbis in halakhic matters; 2. the occurrence of miracles, and 3. the victory of the rabbis over the Divinity.

III

The relationship between rabbinical opinion and an opposing Divine Voice in favor of the view of an individual is essentially a normative problem: which of the two should, in principle, prevail. In our story the problem is posed in a particularly acute form since doctrinally a Divine command stands at the apex of the religious normative hierarchy from which the rabbis themselves derive their whole authority. If a Divine Voice is the expression of the Lawgiver's will, how can any contrary decision, even of a majority of rabbis, prevail normatively? Many of the commentators, as we shall see, have not been prepared to put the problem in this fashion and their understanding of the story is directed to avoiding the creation of such a profound normative conflict in the religious sphere.

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The attempts to resolve the problem lend themselves to a classification. The first, which may be termed *monistic*, regards all religious norms as belonging to one order in which any inconsistency is to be composed. The other, *dualistic*, mediates the conflict by creating two normative orders, each valid at a different level.

To deal with the monistic approach, if the order is unitary, it must follow logically that one norm is rejected in favor of another. In principle, the rejection can rest either on substantive grounds or on formal grounds. The Divine Voice in the story of Achnai's oven, could be either true or false in substance or valid or invalid in form. The same holds for the rabbis' decision.

A review of the different monistic interpretations shows that the rejection on formal grounds of the Divine Voice is part of a rationalistic current in Jewish thought of which Rabbi Nissim Gerondi is an outstanding representative. The story is mentioned by him a number of times.²¹ He cites it as proof his general standpoint that all halakhic decisions must be based on the human intellect.

Thus, although all of the rabbis saw that Rabbi Eliezer had put the matter more correctly and that all the signs he gave Divinely authenticated his decision, nevertheless in the end the final word was with them because the decision they had arrived at was dictated by their human reasoning. They were conscious of the fact that in the circumstances that decision was wrong but they could not hold otherwise, for that would have meant going against their religious conviction, when their intellect told them that the oven was unclean, the determination being entrusted to the rabbis at all times.²²

Here the reason is formal. Although the final decision of the majority was erroneous, it nevertheless took effect because "whatever they agreed upon, the Lord had commanded."²³

A similar approach is taken by the author of *Sefer HaHinuch*,²⁴ who gives a practical reason for preferring the majority view to the absolute truth, which is the privilege of the individual.

It is better to suffer one error and all bend to the good understanding

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of the rabbis rather than each of us should act as he thinks, for in that direction lies the destruction of religion, the rupture of the people and the complex disarray of the nation.

This outlook accords well with the general theory of Maimonides²⁵ — that prophecy has no function in interpreting the law.²⁶ And the observations of Rabbi Nissim Gerondi also serve as a conceptual basis for later opinion, such as that of the author of *Kezot HaHoshen*,²⁷ regarding the creative function of those who decide the law. Doctrinal recognition of the possibility of error strengthens them, for otherwise they might hold back from accepting judicial office in view of the serious responsibilities which attach.²⁸

But the formal approach was not acceptable to others who tried to explain the rejection of the Divine Voice on material grounds. The Divine Voice, it was urged, was not accepted because it was not authentic in the broad sense and because it was not intended originally to be binding in its normative essence. It is in this spirit that Rabbi Nissim Gaon²⁹ dwells on the language in which the story is couched.

The Divine Voice did not proclaim that the law on the specific matter was as he said it was but that in general it was “always” so, and it can be said that “always” meant other than in the present case.

Another interpretation, which he suggests, is that the Divine Voice went forth to try the rabbis and see whether they would yield a legal tradition of theirs in the face of the challenge of a Divine Voice. According to both interpretations, the Divine Voice was not meant to decide the law in this instance and *ipso facto* did not create any normative conflict.³⁰

The Tosefot³¹ adopt a similar approach, suggesting the possibility that the Divine Voice only issued to render honor to Rabbi Eliezer who had asserted that Heaven would prove the matter.

Despite their varying points of departure, these interpretations³² are akin in their solutions of the problem in affirming that a Divine Voice possesses no normative significance and, accordingly, the decision of the rabbis is both correct in essence

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and binding.

An opposite view — and perhaps most far-reaching, having regard to the plain meaning of the story — is offered by Rabbi Moses of Bisencz in his *Darash Moshe*.³³

The reason why they paid no heed to the Divine Voice is simple. So is the reason why the Holy One Blessed Be He burst out in laughter. It is known that the Torah and equally the sages speak in the language of ordinary people. Thus it would seem as if the Holy One made of Rabbi Yehoshuah's reply a matter of laughter since he erred greatly. The Torah only says that the majority must be followed in respect of human beings who do not understand the real truth of a matter but that does not pertain with regard to the Glorious One who knows the truth of all things. The Holy One laughed when He contemplated His children wishing to defeat him with fantasies and baseless argument.³⁴

According to this commentator there the Divine Voice is expressive of the truth and normatively binding: the decision of the rabbis is in error and not binding. The Divine Voice reacted with ironic amusement at the attitude of Rabbi Yehoshuah and his companions who, so to speak, wished to score a victory over Him.

Very many of the commentators offer a dualistic construction, in the sense that "both are the words of the Living God": both decisions are correct and each is binding but at different levels, although views differ as to the nature of these levels.

Rabbi Moses ben Yitzhak Bonems, the author of *Mahadura Batra l'HaMarsha*,³⁵ distinguished between the study of the Torah in Heaven and deciding the law on earth. The majority rule applies only to the latter. In Heaven, learning is pursued for its own sake without any other aim or motive. Thus the opinion of the majority need not necessarily prevail, provided that the individual is rightly disposed towards the Halakhah. It is for this reason that Rabbi Yehoshuah said to the Divine Voice "It is not in Heaven," that is, our dispute is not being conducted in Heaven and You have already proclaimed at Sinai which is of this world that the majority must be followed. The Divine Voice is authentic in stating that in Heaven the law is as Rabbi Eliezer, one against the many. But here on earth

we pay no regard to that but follow the majority.³⁶ Hence, Rabbi Eliezer was right in the contemplation of Heaven, even if it was condemned in the world below.³⁷

Two different appraisals are found in the commentary of Rabbi Yosef's Delmedigo of Candia in his *Ta'alumot Hochmah*,³⁸ where he deals generally with the relationship between Kabbalist theory and the Halakhah. For him Rabbi Eliezer was right from the individual viewpoint but the law was nevertheless with Rabbi Yehoshuah and his fellow rabbis. He wrote:

Even if the true law is according to the possessors of the mysteries we cannot but follow the modalities laid down in the Torah and at Sinai for resolving doubts. Even if we err, we incur no penalty. But, he whom the Lord has graciously distinguished from among the other sages in discovering the essential truth of things from another source has no need to go along the ordinary path. Thus Rabbi Eliezer was so steadfast in his views in the disputation and could not accept the reply of Rabbi Yehoshuah to follow the majority.³⁹

According to this individualist approach, the person who knows the absolute truth may, perhaps even must, adhere to it in contrast to others who are subject to majority rule.⁴⁰

A parallel to this difference between the individual and the majority is to be found in *Be'er Hagolah* by Maharal of Prague.⁴¹ Here the matter is viewed more abstractly. The story is explained by a qualitative distinction between minority and majority opinions. In the process of reaching the generality of the majority, the limitations of the individual are transcended and we approach more closely to the Supreme Intellect. Once again both of the opposing views are authentic but that of the majority is to be preferred.⁴²

IV

Apart from the Divine Voice, the other main theme discussed by Jewish scholars concerned the miracles which manifested themselves at the instance of Rabbi Eliezer. Two basic trends can, it seems, be discerned in the commentaries. Neither accepted the miracles in a literal sense. According to Rabbi Hananel, as quoted in *Shitah HaMekubetzet*,⁴³ the miracles did

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not actually take place — one of the scholars present dozed off and saw them all in a dream. This is but another version of the well-known view which generally denies miracles and seeks to explain those which are said to have occurred to the rabbis as visions seen in a dream.⁴⁴

This view, itself in dispute, is subject to severe criticism, particularly in the present context from the author of *Sefer Ha-Kanah*.⁴⁵ Indeed he hurled abuse at those who maintain that the miracles only occurred in a dream, and urges rather that it all actually happened while awake. Rabbi Ashkenazi in *Y'fei Mareh*⁴⁶ also observes

For myself I understand these things only in their literal sense, for the sages were not incapable of such great deeds.

The proponents of the other trend do not address themselves directly to the possibility of miracles, either generally or on that particular occasion, but they suggest an allegorical interpretation which aims to attach to each incident its own specific meaning relative to the dispute. Somewhat in like fashion, each of the miracles has been seen as a symbol of the qualities and character of Rabbi Eliezer himself and their recital as intended to convince the rabbis that he was right. Thus the carob tree symbolizes his being satisfied with little,⁴⁷ or his venerable age or his having acquired learning arduously.⁴⁸ The stream of water is remindful of his possession of the oral traditions of the past,⁴⁹ or his humility and meakness of spirit⁵⁰ or his profound scholarship.⁵¹ The walls of the school house are indicative of his assiduity, his tirelessness and abundant diligence in the study of the Torah.⁵² And the refusal of the rabbis to accept his opinion is explained on the ground that the high qualities of an individual are not evidence of his rightness in Halakhic disputes.

Another similar explanation attributes to the miracles a symbolism which goes not to Rabbi Eliezer but to those rabbis who were inclined to agree with him. Thus,⁵³ the carob tree suggests Rabbi Hanina ben Dosa, whom a peck of carobs sufficed from one week's end to another. The stream of water represents Rab-

bi Elazar ben Arach, who is described as an ever-swelling fountain, and the walls of the schoolhouse the young scholars studying there.

Still another interpretation, that of Maharsha,⁵⁴ links the evidence of the miracles not with the personality of any individual but with the essential argument put by Rabbi Eliezer. The carob tree represents his reason for not holding with the majority.

The decision of the majority of you who oppose me is like the carob tree that bear no fruit . . . your words are as the carob . . .

A substantive connection between the miracles and the dispute is also pointed out in *Rosh Yosef* by Yosef ben Ya'akov,⁵⁵ who, with scholastic dialectic, associates them with the question of the impurity of the oven.

An outstanding allegorical exegesis is presented by Rabbi Efrayim of Luntschitz in Poland in his *Ollelot Efrayim*. He likens the oven to the offense of defamation which cannot be atoned either by repentance or by good deeds unless the person sinned against has been truly conciliated. The miracles symbolize certain other serious transgressions for which repentance is atonement, but they do not persuade the rabbis.

V

A largely theological theme which has engaged the attention of the commentators is that of Divine admission or Divine defeat. A legal scholar of our day⁵⁶ finds an interesting contrast between this victory of man over the Divinity and the reaction of Zeus to the success of Prometheus in circumventing him and bestowing fire upon mankind. In the one case, a laughing admission of defeat, in others, rage and awesomely brutal punishment.

Some commentaries⁵⁷ mention in this connection the *aggadic* passage in Tractate *Pesakhim*.

Rabbi Kahana said on the authority of Rabbi Yishmael ben Rabbi Yose: What is meant by "*La-menazeah David?*" (a common super-

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scription to a number of Psalms, the first word deriving from *nazeah*, to be victorious), Sing praises to Him who rejoices when they prevail over Him. See how the character of the Holy One Blessed Be He is unlike that of mortal man. Mortal man is saddened⁵⁸ when he suffers defeat but the Holy One rejoices, for it is said, "Therefore He said He would destroy them, had not Moses His chosen stood before Him in the breach" (Psalm 106:23).⁵⁹

Others, however, have explained differently "my sons have defeated me." Maharal of Prague⁶⁰ deals at length with the difficulty that it is not possible for the ordinary man to score a victory over his rabbi in a matter of Halakhah. Nor is it proper to say that the Divinity has retracted from his own commandment, for that would involve His changeability. Maharal explains the "defeat" by propounding a theory about the relationship between God the giver and Israel the receiver. The will of the child is the will of the Father.

Since they received the Torah at Sinai together with the rule that the majority is to be followed, the latter cannot be set aside. And in this regard the Holy One Blessed Be He said "They have defeated Me." I say that they were right to do so and I agree with them although I have said that the Law is with Rabbi Eliezer. Just as a father whose sons "defeat" him will do what they wish until he also desires what they do.

That the Sages themselves carried out the eternal will of God in abiding by the original prescript of the Torah to follow the majority is also expressed by Z. H. Chajes.⁶¹ What is involved, he says, was not a defeat in the sense of prevailing over an opponent but "the moment The Holy One Blessed He heard that the Sages would pay no attention to the miraculous supernatural happenings evoked by Rabbi Eliezer but instead said: 'it is not in Heaven,' that was evidence how deeply implanted in their minds was the concept of God's eternity, i.e., it was not subject to chance or change." That is what "My sons have defeated Me" really meant — the profound belief in His unchangeable over-lastingness (*Nezah*).⁶²

The author of *Sefer HaKanah*⁶³ also does not find any victory of the Sages in the halakhic story. *Nitzhuni* here possesses the meaning of "reinforcing Me and doing My wish, of honoring Me."

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NOTES

1. *Baba Mezhiah* 59. In the Jerusalem Talmud the story is found in *Moed Katan*, III, 1. Important differences exist between the two sources. For a comparative study see A. Guttmann, "The Significance of Miracles for Talmudic Judaism," (1947) 20 *H.U.C.A.* 363.
2. V, 10 and also *Eduyot* VII, 7.
3. Deuteronomy 30:12.
4. *Y. Moed Katan* III, 1 reports this explanation as of Rabbi Haninah. The printed text is somewhat garbled. See *Dikduke Sofrim ad locum*.
5. Exodus 23:2.
6. Between these two explanations there is no necessary connection. The view of the majority need not prevail when a problem is of a kind which merits a revelation from Heaven. "It is not in Heaven" and "no regard is paid to any Divine Voice" are much broader conceptions. They deny categorically the necessity of paying any attention to a halakhic decision which issues from Heaven, even when no opinion at all exists on a particular matter or it is unanimously held that the matter is in doubt. "One must abide by the majority" adds a dramatic touch to the story by setting a Divine Voice against human opinion.
7. In *Y. Moed Katan* the story appears in discussion of excommunication. See also *B. Berakhot* 19a.
8. For the historical background, see M. Aberbach, "Did Rabban Gamliel II impose the Ban on Rabbi Eliezer ben Hyrcanus?" (1964) 54 *J.Q.R.* 201; Guttmann, *op. et loc. cit.*
9. New York, 1973.
10. *Ibid.*, p. 64.
11. Edmund Cahn, "Authority and Responsibility," 5 *Columbia Law Review* 838.
12. See the criticism of Stone, *Human Law and Human Justice* (1965) p. 27, n. 89.
13. Ascarelli, *Problemi Giuridici*, (1959) pp. 14, 157-58. Cf. Ch. Perelman, "L'interprétation dans le droit," *Archives de Philosophie du droit*, tome XVII (1972) pp. 29, 34-35.
14. But see G. Tedeschi, "Insufficiency of the Legal Norm and Loyalty of the Interpreter," *Proceedings of the Israel National Academy*, vol. 1 (1964).
15. E. E. Urbach, *The Sages — Their Concepts and Beliefs* (1969) p. 3. (Hebrew).
16. Cf. the general criticism of A. Levontin in (1962) *HaPraklit*, p. 182, n. 3.
17. E. Fromm, *Psychoanalysis and Religion*, (1950) pp. 54 et seq. Cf. W. Kaufman, *Critique of Religion and Philosophy* (1958), pp. 238-40; Stone, *op. et loc. cit.*
18. See Y. Baer, *Israel Among the Nations* (Hebrew), (1955), pp. 108-9: "It was ultimately found necessary to restrain the magic power of the individual scholar so as to arrive at a decision binding upon all. Typical in this regard is the story of the Oven of Achnai and the excommunication of Rabbi Eliezer ben Hyrcanus, particularly in the Babylonian version." But contrast Urbach, *op. cit.*,

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p. 99.

19. *Ibid.*, p. 3.

20. Most of the later sources were brought to my attention by Rabbi Joseph Buchsbaum, Director of the Jerusalem Institute, *The Treasury of Talmudic Commentators*.

21. *Derashot HaRan*, III, V, VII.

22. *Ibid.*, III, at end.

23. *Ibid.*, V.

24. *Sefer Hahinuch* (Mosad HaRav Kook, 1963, 5th ed.) Commandment 408. See also Rabbi Bahya on Deuteronomy 13:5.

25. *Mishneh Torah, Yesode Hatorah*, IX, 4. So also in his *Introduction to the Mishnah, Zeraim*. Cf. E. E. Urbach, "Halachah U'Nevuah," (1947) 6 *Tarbitz*, 20-21.

26. On this problem, see generally *ibid.*, and the sources cited by Z. H. Chayes, *Torat HaNeviim*.

27. Introduction.

28. See Englund, "The Problem of Jewish Law in a Jewish State," (1968) 3 *Israel Law Review* 254, 256-58, nn. 9, 10.

29. On *Berakhot* 19b.

30. See the criticism of Urbach, *op. cit.*, p. 11.

31. *Baba Mezi'ah* 59b. s.v. "Lo Bashamayim Hi."

32. It is an attempt to reconcile the *Gemara* here with *Eruvin* 13b and *Yevamot* 14a, where a Divine Voice was accepted in a dispute between Bet Hillel and Bet Shammai.

33. Cracow, 158-9, p. 59.

34. This interpretation also appears in *Hidushe Geonim* noted in *Ein Yaakov* on *Baba Mezi'ah* 59.

34a. *Gittin* 6b.

35. The author was a son-in-law of Maharsha. (Rabbi Shmuel Edels). In the introduction to his book, he indicates that the novellae on the *aggadot* mentioned are his own.

36. This is the version according to the text published in Altona, 1734. A somewhat different version is given in *Ohel Yosef* by Rabbi Yosef Molcho (Salonica, 1756) p. 87, apparently in reliance on one of two earlier editions.

37. An interpretation along similar lines is given by Rabbi Yosef ben Yaakkov in his *Rosh Yosef* (1717) on *Baba Mezi'ah*, 86.

38. (1629) pp. 22 *et seq.*

39. *Ibid.*, p. 23. Continuing, the author explains in this manner the fact that the *poskim* differ from Rabbi Shimon bar Yohai.

40. Compare also the approach of the Kabbalist Rabbi Menahem Azariah of Fano in *Asarah Mamarot, Hikur Hadin*, Part 2, ch. 18: "Thus Rabbi Yehoshuah well said that *in practice* it is not in Heaven, although dialectic truly justified Rabbi Eliezer. Yet the Divine Voice which said the Halakhah was with Rabbi Eliezer also spoke truly for he never said anything unless he had received from his teachers." See *Yad Yehudah, ibid.*

41. *Be'er* 4.

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42. Not all have agreed that Rabbi Eliezer might continue to maintain his view in face of that of the majority. See *Sefer HaKamah* (1784) pp. 79 *et seq.* according to which the Divine Presence inclined to Rabbi Eliezer's view out of love for purity and therefore agreed to everything which he did although he was in a minority of one. But when the rabbis did not concede to him, it was for him to have retracted and accepted the decision of the majority.

43. On *Baba Mezhiah*, 59.

44. See Z. H. Chayes, *Mevo HaTalmud*, ch. 28 (English Translation, London 1952) and the sources cited there, and particularly in the present context *Hakotev*, *Ein Ya'akov*, *Berakhot* and the Novellae of Ritba to *Baba Batra* 73. See also Rabbi Nissim on *Berakhot* 19.

45. See note 42. The author of the book is unknown. For the date of this book (14th cent.) its historical significance and its tendency, see G. Sholem, *Major Trends in Jewish Mysticism*, 2nd ed., (1946) p. 211, 292; Y. Baer, *History of the Jews in Christian Spain*, (1961-66), vol. 1, p. 369 *et seq.*

46. Rabbi Samuel ben Rabbi Yitzhak Yafeh Ashkenazi on the legends in the Jerusalem Talmud (Venice, 1590) *Moed Katan*, III.

47. *Toledot Adam*, Biography of Rabbi Shlomo Zalman of Volozin, by Y. Feivel, p. 108. So also *Orah Yesharim*, on *Baba Mezhia*, 59.

48. *Y'fei Mareh*, n. 46 above.

49. *Ibid.*

50. *Ibid.*; *Toledot Adam* and *Orah Yesharim*, *ubi supra*.

51. *Darash Moshe*, as above.

52. See the sources cited in n. 50.

53. This interpretation is given by *Maharam Schiff* in his commentary on *Baba Mezhia*, 59, but he has reservations about the allegorical method in concluding "and all this is far fetched."

54. On *Baba Mezhia*, 59.

55. See n. 37.

56. Tammelo cited in Stone, *op. cit.*, p. 28 n. 89a.

57. *Shita Mekubetzet*, *ibid.*; *Mitzpeh Eitan*, on *Baba Mezhia*, 59; *Ahavat Eitan*, to *Ein Yaakov*, *ibid.*

58. See the sharper reaction of a human king recited in *Avodah Zarah*, 10a: "Anyone who defeats a king in argument is to be cast into a furnace."

59. *Pesakhim*, 119a. For further parallel sources, see Heschel, *Theology of Ancient Judaism* (Hebrew) vol. 2, p. 309.

60. *Be'er Hagolah*, *Be'er* 4.

61. In his Novellae to *Baba Mezhia* 59.

62. In the same spirit, *Orah Yesharim*, as above, as well as *Toledot Adam*: "In my view the word of *nizhuni* has the connotation of continuous existence, persistence, that is to say, after my children have reached the stage where all signs and miracles contrary even to a minor principle basic to the Torah are treated as null and void, I am assured that My children have made Me eternal. I shall be their Father and their God for time everlasting."

63. See notes 42 and 45.