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IN THE SPACE BETWEEN KORACH AND SHAMMAI:

DEALING WITH TORAH ARGUMENTS THAT MIGHT OR MIGHT NOT BE FOR THE SAKE OF HEAVEN

Rabbi Aryeh Klapper, Dean

Every faction that exists for the sake of Heaven – will ultimately endure;

Every faction that exists not for the sake of Heaven – will not ultimately endure.

Which are factions that exist for the sake of Heaven? These are the factions of Hillel and Shammai.

Which is a faction that exists not for the sake of Heaven? This is the faction of Korach and his edab.

(Pirkei Avot 5:17)

Careless readers of this beautiful mishneh might conclude that each and every faction can be classified as either “for the sake of Heaven” or else “not for the sake of Heaven”. But nothing about the Mishneh denies a more complex reality in which factions are coalitions of people with different motives, and in which individual human beings often have mixed motives. Meshekh Chokhmah (quoted in [my Jewish Press column this week](#)) implies that even “Korach and all his *edab*” must be read narrowly to exclude the 250 elders who came with Korach, as their motives were pure. The Mishnah should be used as a *musar* self-check rather than to dismiss opposing factions as ephemeral.

It should also be clear that there is no necessary relationship between purity of motives and quality of argument. The best of arguments will be appropriated by the greedy if it serves their interests; and the righteous are fully capable of gross analytic or interpretational error. A demonstration of sordid motives does not absolve us of the obligation to accept the truth from whoever speaks it, and to reject the false likewise.

But we must acknowledge that the halakhah does not always follow the best argument. Philosophy is

properly a world of *emet vasheker*, truth and falsehood, in which arguments are evaluated without regard to who makes them. But practical halakhah is a normative system, which is to say it exists in the realm of *tov vara*, good and evil. In that world, it matters very much **who** has authority, and order is better than chaos. Therefore, at times one must follow a weaker argument made by a greater authority over a stronger argument made by a lesser or non-authority, and law has an inertial preference for continuity.

Halakhic decisionmaking must nevertheless not be allowed to depend **exclusively** or even **primarily** on who has authority rather than on the strength of arguments. G-d made halakhah depend on textual interpretation and rational argument in order to ensure that Jewish religious leaders would always be intellectually accountable to the people.

The mistaken idea that halakhah depends exclusively on personal authority leads to a politics of personal destruction, in which the only effective response to disagreement is to delegitimize the disagreeing person (or community).

The mistaken idea that halakhah depends exclusively on perceived analytic superiority leads to a politics of intellectual dishonesty. If truth is in and of itself a sufficient ground for practice, then we cannot risk allowing anyone to think even for a moment that the arguments for a position we disagree with are compelling.

Orthodoxy is currently plagued by an incoherent and malignant combination of these two mistakes. The consequences are that people who make bad arguments for positions we disagree with are attacked personally

to deny them authority; and good arguments made by people without personal authority are ignored or disingenuously dismissed to ensure that no one follows them until they are given authority.

Each of these consequences is immoral, and also very poor policy.

Rabbi Zevulun Charlop shlita, Dean Emeritus of RIETS, likes to say that *mechadshim* (creative Torah scholars) should be evaluated like baseball batters: even the best only hit safely once every three tries, and those with power are regarded as successful at much lower ratios. *Mechadshim* with power are more likely to be wrong, and their mistakes are likely to be doozies.

What happens to a Torah community that delegitimizes public intellectuals after their first error, and rejects all disruptively creative ideas out of hand? A Torah community needs to be able to tolerate and survive significant and even potentially dangerous errors, or else it will stifle the creativity that is essential to its intellectual and spiritual health.

Our panic when confronted by presumptive halakhic authorities who make bad arguments about important issues, or presumptive nonauthorities who make good arguments, reflects a deep lack of trust in our community. We suspect first of all that our nonscholars cannot distinguish weak from strong arguments, especially when they have a rooting interest in the outcome. Secondly, we suspect that many members of our community do not care about the strength of an argument, or about the consensus of scholars. Rather, they see the existence of any sort of argument as a *matir*, as giving them the right to do what they want.

These suspicions are not groundless. But we overreact to them when we seek to prevent non-poskim from having any input into halakhah, or seek to shoehorn all scholars into a conformist mold. A healthy halakhicate wants to be accountable to its laity, and wants everyone to be as autonomous as is consistent with preserving the role of halakhah as law rather than as subjective religious expression.

These overreactions often generate a vicious cycle. The

overbearing push for conformity leads to a celebration of even shallow ideosyncrasy. Telling nonscholars or lesser scholars that they have no say leads them to deny the legitimacy of authority. Each then side then uses the other's reactive misbehavior to justify its own escalation.

By the same token, error should not be without consequences, especially if the error is not acknowledged. On Gittin 43a Rabbah bar Rav Huna tells us that “A person does not find his footing in words of Torah unless he stumbles in them first” – in the context of correcting his previous mistaken ruling. Home run hitters usually strike out a lot because they take big swings, but not everyone who takes big swings is a home run hitter. Some people simply can't hit at all. Obviously, a past record of achievement makes it more likely that we'll keep you in the lineup when you're slumping.

I think we can admit that Orthodoxy faces enormous challenges. Not so much to our survival, as to our capacity to live integrated religious lives in modernity. We have not yet developed sufficiently compelling intellectual responses to Biblical criticism, or halakhic responses to the (wonderful) ethical challenge of participating as full citizens in a pluralistic society, or sociological responses to the existence of large numbers of Jews who see intermarriage as no bar to full communal membership, or moral responses to Jews who see no justification for heteronormativity.

These are just some of the many issues we confront where past ideas are insufficiently developed to guide us. We need intellectual incubators, not sterile industrial egg farms.

One can of course deny the value of living an integrated religious life anywhere outside the beit midrash. One can shrug off the reality that less than 10% of American Jews identify as Orthodox, let alone live halakhically observant lives, by blaming the audience and absolving the product, or by waiting for demography to change that reality.

But if we are not prepared to do any of these, it's time we learned to leave a greater margin for error. *This Dvar Torah was originally published in 2017.*