Five Challenges in Teaching Halakhah in the Conservative Movement

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Hillel teaches us: "Do not separate yourself from the community" (m. Avot 2:4). Throughout history, rabbis have interpreted that charge as a challenge to avoid the temptation of quiet learning and individual fulfillment. Rather, the rabbi must seek the application of theory to practice by engaging with the people and taking on the task of the original rabbi, our teacher Moses, in sharing and teaching Torah. The very word "rabbi"—which means "teacher"—has meaning only in relation to the other. For whom is one a rabbi? In this article, I address five challenges that Conservative rabbis encounter in their communities. How do we become true rabbis in teaching halakhah?

The Linguistic Challenge

Every teacher must figure out how to communicate the ideas of the subject one is teaching. The language—the vocabulary, grammar, and culture—is the tool that teachers use for each subject. Whether it is mathematics or metaphysics, chemistry or critical theory, one uses the symbols and vocabulary that communicate a particular culture of learning. In the Conservative Movement, this is particularly challenging because the very language of halakhah that should be our best tool in communicating its content is foreign to most Conservative Jews. The overwhelming majority of Conservative Jews do not have facility with Hebrew, needless to say Aramaic. Even the ability to read Hebrew letters has significantly decreased in the last generation, as evidenced by the increase in transliterations in our liturgical publications. Halakhah uses a technical vocabulary that is built on a language that our people do not speak or read.

Beyond the meanings of words, we must also teach concepts. If I use the terms *lekhatḥilah* and *bedi'eved* I need to explain the concepts in clumsy English as "before the fact" and "after the fact." (The Latin terms *ab initio* and *ex post facto* do not help much either.) The terms *de'oraita*, *derabbanan*, and *minhag* can be translated as "Toraitic," "rabbinic" and "custom,"

but these words hardly do justice to the complex systemic concepts of basic legislation, secondary legislation, and common law. *Torah shebikhtav* and *Torah shebeʿal peh* are terms that speak to ideas beyond the literal meanings of Written Torah and Oral Torah. The vocabulary and the meanings behind the phrases must be explained whenever we teach halakhic argumentation and reasoning.

The challenges of language in teaching halakhah go beyond terms and phrases. The theological ideas that give substance to the halakhic mindset require far more significant translation. When I say that something is a "sin," I need to explain that in halakhah, a "sin" does not mean that you are going to hell, but it is generally more significant than an assessed late fee on a bill. A late fee still implies accountability, whereas a "sin" is far more theoretical, but in the language of halakhah, a transgression of the law does imply culpability. When one teaches halakhah in the Conservative Movement, each lesson must entail a certain explanation of words, terms, and concepts, and one can rarely do justice to each as a digression from a lesson on a specific halakhic question. In my own rabbinate, I hope that as I return again and again to certain ideas and concepts, my listeners will, over time, be better able to hear what I am trying to teach. All teachers hope for that, as pedagogy is too often defined by its aspirations than its results. Yet the linguistic challenges are the easiest to overcome in teaching halakhah in the Conservative Movement.

The Structural Challenge

Conservative Judaism proudly proclaims itself as "a halakhic movement," distinguishing itself from the other non-Orthodox streams by its commitment to halakhah. However, one would be hard pressed to argue that members of Conservative synagogues live halakhic lives in contradistinction to members of Reform synagogues. There might be a higher number of kosher kitchens in the homes of Conservative congregants, but that number is still a minority and so cannot be a defining characteristic of Conservative Jews. I must also categorically reject the solution of dismissing the majority of Conservative Jews as not "true" Conservative Jews. We have enough demographic challenges without writing off 90 percent of our constituency. Back in 1988, the Movement's only published platform of belief, *Emet veEmunah*, described the Conservative Jew as "a striving Jew" defined through

aspiration rather than commitment.[1] The devotion to halakhah through other-than-personal commitment has been represented in the structural ideology of Conservative institutions. The rabbi is the *mara deʾatra* (another technical term that requires multiple levels of unpacking), the halakhic authority of the synagogue. Codified into rabbinic contracts, synagogue bylaws and the United Synagogue standards, the *mara deʾatra* concept means that the rabbi of the synagogue is the ultimate authority on all halakhic questions. Matters of Jewish law cannot be determined by votes of the ritual committee or board of trustees. While opinions will and often need to be addressed there, the final arbiter is the rabbi. This structural edifice of ideology was meant to establish the authority of halakhah in Conservative institutions through the authorized authority of the local rabbi.

However, the *mara deʾatra* concept has always worked better in theory than in practice. First, there is a structural conflict within the synagogue, because American congregations (that are not part of the Catholic church) have long been established as autonomous corporate entities, each governed by its board of trustees. Even if the bylaws establish the rabbi's authority to make determinations of halakhah, the board can always remove the rabbi from office. The rabbi's contract guarantees compensation, not authority. Second, by restricting the rabbi's authority to "matters of Jewish law," the rabbi's real authority as leader of the community is often diminished to the restricted "ritual sector" of synagogue decision-making, whereas halakhah should ideally inform everything we do. Finally, while the Movement insists on the local rabbi's authority, this diminishes the role of the central authority. The central halakhic body, the Committee on Jewish Law and Standards (CJLS), functions more as an advisory council than a high court for Conservative rabbis. CJLS decisions can thus become authoritative by minority votes of the committee members, and even decisions passed by broad majority of the twenty-five voting members are not enforceable upon local rabbis. Yes, there are "Standards of Rabbinic Practice" and other expectations of rabbis that are enforced by the Rabbinical Assembly and the United Synagogue (such as the prohibition against Conservative clergy to solemnize intermarriages), but those are matters of union discipline more than halakhic authority.

While the CJLS's authority is limited vis-à-vis the local rabbi (*mara deʾa-*

[1] *Emet veEmunah: Statement of Principles of Conservative Judaism* (Jewish Theological Seminary, Rabbinical Assembly and United Synagogue, 1988), 57.

tra), its decisions are significantly respected throughout the non-Orthodox world. As a carefully balanced (and prolific) body of individuals (rabbis and others) who care about halakhah, the decisions of the CJLS are influential beyond the boundaries of the Conservative Movement. The reason for this is that true authority—and especially religious authority—is earned rather than conferred through institutional structure. A successful congregational rabbi is one who is listened to because of the teacher one has become, not because of clauses in the rabbinic contract and congregational bylaws. In this realistic sense, the structural challenge of teaching halakhah in the Conservative Movement can be overcome by de-emphasizing the institution and focusing on the Torah that is taught. We should not say that halakhah is relevant because we are Conservative Jews. Rather, we should say that we are Conservative Jews because halakhah is relevant.

The Functional Challenge

What is the function of halakhah in our lives? What role does it play? The structural problem of halakhah in the Conservative Movement, as discussed above, is that the siloing of the rabbi's authority over ritual matters in the Conservative synagogue implies a severe limitation of the effect of halakhah on our lives. When I teach halakhah in a Conservative synagogue, it is easy to explain why the CJLS should take a position on whether or not one can count a Torah scroll as the tenth in a minyan but much harder to explain why one is not permitted to smoke a cigar. (I voted against the latter question. I wrote the paper on the former.) Forbidding smoking on the grounds of a synagogue is one thing, but to say that all smoking is forbidden makes a broader statement, namely, that halakhah makes a claim on the entirety of our lives. I believe that it should and does, regardless of that (or any other) particular question. The challenge is how to teach the functionality of halakhah to Conservative Jews for whom that worldview cannot be presumed.

In the last fifty years, there were two major halakhic debates in the Conservative Movement, and both were narrowly focused on the structural and functional impact of the determination of law: Could women be ordained as rabbis? And could gays and lesbians be ordained as rabbis? The debate over women rabbis, which extended to the general inclusion of women in ritual, echoed through every layer of the movement, from the Seminary to the synagogue, schools, and camps. Although many feared that the debate about homosexuality would cause the same fissures and pain that people remembered about the debate over women, it engaged rabbis and seminaries

but did not tear communities apart. What so many failed to understand at the time was that "egalitarianism" affected the way that Jews prayed together, while Jewish sexual ethics were understood by most of our constituency as pertaining to the private domain. Everyone could understand, and many had strong feelings about, whether women should serve as clergy, as the nature of worship was a clearly ritual matter over which halakhah still had control. But sexuality is primarily expressed in the bedroom, a very different location than the bimah. From a halakhic perspective, the debate about homosexuality was extremely intense because of a conflict between a Torah verse and contemporary ethics. (The terms of the debate are less intense on egalitarianism because the Torah does not know about rabbis or synagogue services.) But this debate was far less relevant to most Conservative Jews, who did not share the premise that halakhah should have dominion over the private sphere.

Conservative Jews might differentiate themselves from other non-Orthodox groups in wanting their worship services and synagogue programming to follow the rules of halakhah, at least as they are interpreted by Conservative rabbis, but halakhah as a system of law does not limit itself to the four walls of the synagogue. Teaching how halakhah can function in the business world, in politics, and in private life is a formidable challenge. The teacher of halakhah must explain not only why the halakhah in a specific case should be x and not y, but also that halakhah is a body of law that governs the totality of life, not just individual questions.

The Philosophical Challenge

Underlying the functional challenge of teaching halakhah is a commitment to philosophical autonomy among Conservative Jews. While Conservative Jews will ask halakhic questions of their rabbis, they usually do so from a perspective of intellectual curiosity rather than compliance with rabbinic authority. Traditionally, one is not supposed to ask a question of a rabbi if one is not prepared to comply with the response. Most Conservative Jews, however, are not prepared to surrender their personal autonomy in that way. They may be prepared to submit to the rabbi's judgment about a ritual matter in the synagogue, but they reserve the right to make their own decisions about what they eat and when they go to work.

Teachers of halakhah in the Conservative Movement need to understand the gulf that exists between the presumptions of Jewish law and the autonomous nature of the constituency of Conservative Judaism. Too often, Con-

servative Judaism's commitment to halakhah is challenged by emphasizing the distance between what the movement preaches and how the rank-and-file observe. However, the philosophical distance is far more critical than the (low) levels of religious practice. Judaism has always assumed a failure on the part of the people to comply with the demands of Jewish law. From the Torah's account of the golden calf at the foot of Mount Sinai to the High Holiday prayer book's collective "We Have Sinned" liturgies, Judaism understands that Jewish behavior varies from the aspirational. What we must not give up on teaching, though, is that the aspirational is still the commanded. We must recommit to teaching that what we understand halakhah to be is what ought to be, and what ought to be is categorically imperative.

(Most) rabbis in the world do not have enforcement power for their decisions. Jews need to choose the law out of will, not compulsion. Some dismiss the relevance of Jewish law as a legal system if there is no enforcement power. Legal systems, however, should be conceived as cultures of meaning. Jewish law throughout most of its long history has depended on voluntary compliance. The rabbis taught the famous midrash that God gave the people the choice to accept the Torah while holding Mount Sinai over their heads. The context of that homily, however, should be understood as a culture of religious freedom which allows the individual Jew to choose other, nonrabbinic Judaisms or other religions entirely. Personal autonomy should not be feared as a new modern threat to authentic Judaism. Rather, we should recognize it as an authentic grounding of Jews throughout history. The teacher needs to embrace that and open the student's eyes to why one should care about and aspire to live by halakhah. Commitment can come from the ground of personal autonomy rather than through its rejection.

The Theological Challenge

The greatest challenge facing the teaching of halakhah in the Conservative Movement is theological. Since we do not hold that the Masoretic Text (or any other ancient version of the Bible for that matter) is the perfect transcription of God's verbal revelation of law, on what basis should halakhah hold authority over the observant Jew? Solomon Schechter recognized this challenge as the central theological project of what become the ideology of Conservative Judaism. Writing back in 1896, he explained: "It is not the mere revealed Bible that is of first importance to the Jew, but the Bible as it repeats itself in history, in other words, as it is interpreted by Tradition…the

centre of authority is actually removed from the Bible and placed in some *living body*."[2] In other words, the historical approach to Judaism (that is, the founding ideology of Conservative Judaism) means that the biblical and rabbinic literatures are human products of the Jewish pḥeople through the experience of Jewish history. Each generation attempts to best understand what God commands through its reading of the inherited tradition refracted through its own understanding and context. The authority on "God's will," including the meaning of that concept, will vary from age to age and is determined through that refractive historical process rather than being restricted to the words of the Bible as codified millennia ago. We in the Conservative Movement believe that this is how halakhah has always worked and is the only way that any legal (or other system of cultural values) can work. We believe, in theological terms, that God agrees with our decisions and, we hope, is proud of our deliberations. Yet I imagine that every Conservative rabbi has been challenged at least once by a congregant with, "Rabbi, where does it say that in the Torah?"

The rabbis and teachers of Conservative Judaism need to take responsibility for our failure to communicate this most fundamental aspect of our theology. Most people find it difficult to understand any religion in historical terms, reading religion instead as timeless eternal philosophy that is either true or false. The reality of the halakhic process is more nuanced, allowing for multiple and conflicting opinions, which can all be correct in reflecting "God's will" in theological terms. Even the sophisticated historian and bestselling Israeli intellectual Yuval Noah Harari cannot understand how religious systems evolve. In his latest work, Harari writes that "religions like Judaism, Christianity, Islam and Hinduism propose that their ideas and rules were established by an infallible superhuman authority, and are therefore free from all possibility of error, and should never be questioned or changed by fallible humans."[3] He contrasts religious scriptures to secular authoritative documents like the United States Constitution, which, unlike the Torah, has an amendment clause so that it can be corrected as deemed necessary. He does not understand that the rabbinic concept of *Torah sheba'al peh* ("Oral Torah") establishes that amendment clause by giving the rabbis the right to interpret the Torah and adjust its meaning, even if it does

[2] Solomon Schechter, *Studies in Judaism*, First Series (Jewish Publication Society of America, 1896), xvii–xviii.

[3] Yuval Noah Harari, *Nexus: A Brief History of Information Networks from the Stone Age to AI* (Random House, 2024), 71.

so through the language of the continuity of revelation. Recognizing that religious traditions require institutions, such as the rabbinate or the church, to provide authoritative interpretations of Scripture through the ages, he dismisses that evolutionary process as correcting human errors rather than amending divine will: "Jewish Orthodoxy accepted the possibility that the rabbis who composed the Mishnah and the Talmud might have erred in personal matters" he writes, "but when they came to decree religious doctrine, God ensured that they would make no mistake."[4] He criticizes the evolution of Catholic doctrine as blaming all "errors" (like anti-Judaism) on fallible humans rather than on a Scripture that needs changing. On this point, Harari is wrong. The doctrine of papal infallibility, for example, is not a failure of a system that is incapable of correcting error. Rather, it is the "technology," to use his term, that the Catholic Church has devised whereby the pope is able to redefine doctrine for a new age. The same applies to the authority of the rabbinate through the process of halakhic decision-making. Our agreement that rabbis have the authority to determine Jewish law is what makes the Torah a living evolving document for every generation.

We can look back to Joel Roth's seminal work, *The Halakhic Process: A Systemic Analysis*, to help articulate a response to Harari's challenge that religion is an outdated system of information (or of values) because it cannot fully correct itself. The premise of Roth's book is that Jewish law is a legal system and functions like all legal systems. The distinctions between basic, secondary, and common law; the role of precedent; the scope of judicial authority; and the existence of an amendment procedure are the bedrocks of every legal system, halakhah included.[5] In a critical chapter in the book, Roth argues that halakhah has a means to annul a Torah law, called in Hebrew *ʿiqqur davar midʾoraita*. While not a procedure that is easy or frequently employed (Roth never employed that authority himself), it does exist, and it must exist, Roth argues, for the halakhic system to be a legal system. Indeed, the amendment procedure of the United States Constitution may be more difficult to employ today, in our age of intense political polarization. In an emotional critique of religious traditions and their view of homosexuality, Harari compares the Bible to psychiatry's *Diagnostic and Statistical Manual of Mental Disorders* (the DSM), a scientific "Bible" that is regularly revised, including in 1974 when homosexuality was removed as an "illness." Comparing that scientific process to religions, Harari quips:

[4] Harari, *Nexus*, 106.

[5] Joel Roth, *The Halakhic Process: A Systemic Analysis* (Jewish Theological Seminary, 1986).

"You would never hear a pope announcing to the world, 'Our experts have just discovered a really big error in the Bible. We'll soon issue an updated edition.'"[6] That reminds me of the debate over homosexuality and halakhah, when I was asked, "Are you going to have the verse in question whited out from your Torah scrolls?" Both comments reflect a failure to understand how halakhah, and legal systems in general, work. When the United States Constitution is amended, the amendments follow the text. The text itself is not changed. When courts apply interpretations of law codes, annotated codes are published that update the law in the notes. Rabbinic codes and responsa literature are like church canons; they update Scripture to explain how it is understood in each place and time.

We need to teach our constituency that this is the way halakhah works, rather than a watered-down version of a more authentic form of what Harari calls "Jewish Orthodoxy." The theological challenge of teaching halakhah demands that we explain how our decisions are at the same time humanly fallible and yet divinely perfect. We have to become better teachers of halakhah if Conservative Judaism will continue to claim to be "a halakhic movement." Through understanding the linguistic, structural, functional, philosophical, and theological challenges of teaching halakhah in the Conservative Movement, we can imagine how we might do so.

[6] Harari, *Nexus*, 109.

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