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This contribution to the Open Access Project is an essay by Tammi Rossman-Benjamin about the Conservative Movement's Torah commentary *Etz Hayim* and its halakhic methodologies. This essay is intended to provoke thought and is not meant as an attack or condemnation. We hope that it is received in that spirit and that it leads to positive discussion.

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Etz Hayim* and the Conservative Movement

Since the publication of the Conservative Movement's Torah commentary, *Etz Hayim*, five years ago, most of the movement's affiliated congregations have adopted it for synagogue use.¹ But besides an updated translation (for example, no more thee's and thou's), how different is *Etz Hayim* from more traditional Torah commentaries that it is replacing? And of particular interest, given *Etz Hayim*'s widespread appeal within the movement, is how the Conservative Movement has imprinted this ancient sacred text with a unique Conservative theology.

Two critical reviews by Hillel Halkin² and Arnold Jacob Wolf³ address these questions. Both reviewers take as their starting point the division of *Etz Hayim*'s commentary into three sections, which have been dubbed "P'shat", "Drash" and "Halakhah l'ma'aseh". As rabbinically defined, Pshat is the simplest, most literal meaning of the text, Drash is its implied or logically deducible meaning, and Halakhah l'ma'aseh refers to the Jewish religious laws that can be derived from the text. Into these traditional exegetical categories the editors of *Etz Hayim* have put a potpourri of commentary drawn from a wide range of sources, from classical rabbinic to modern secular. And it is here, at the nexus of traditional and non-traditional exegesis, that Halkin and Wolf search for evidence of the uniquely Conservative nature of *Etz Hayim*.

Halkin finds the Conservative Movement's theological position most clearly articulated in the Drash section of *Etz Hayim*, although in his opinion, clarity is precisely what this section lacks. In an exploration of the D'rash commentary focusing on two verses in Leviticus dealing with the Jewish dietary laws, Halkin notes that the commentary, without explicitly referencing classical rabbinic sources, nevertheless embraces the traditional understanding of the nature and purpose of the dietary laws, but at the same time rejects a strictly rabbinic approach to their observance. This seemingly inconsistent approach – simultaneously adopting and rejecting rabbinic midrashic norms without explanation – justifies, for Halkin, the long-held perception that "Conservatism is a movement of inconsistency and compromise... at the highest intellectual level."⁴

Wolf, too, contends that negative stereotypes of the Conservative Movement's theological position are born out in *Etz Hayim*, but his evidence is primarily drawn from

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the Halakhah l'ma'aseh section of the commentary. Like Halkin, Wolf discerns the outlines of a Conservative theology not in the commentary that is included in this section, but rather in what is egregiously absent. First, Wolf points out that there is no discernible selection principle at work, which would clarify why the halakhic implications of one part of the text are elucidated while they are ignored in another part. Even more revealing, in Wolf's estimation, is the conspicuous lack of halakhic controversy included in this section, which leads him to charge that the editors of *Etz Hayim* "have obscured their own movement's inevitable and thoughtful debate and have smoothed over difficult teachings of the Torah."⁵ Citing the writings of Mordecai Kaplan, who early in the history of the Conservative Movement called it "contemptible" for its "non-committal and cowardly" attitude to Halakhah,⁶ Wolf concludes that halakhic unclarity and timidity are not only what defines Conservatism today, but they have been the movement's hallmark since its inception.

While it is noteworthy that Halkin and Wolf arrive at similar conclusions about the Conservative Movement's problematic theology by exploring different sections of *Etz Hayim*'s commentary, these reviewers leave unanswered two fundamental questions: *why* is the movement's theological stance characterized by inconsistency and vagueness, and *how* will such a stance affect the Conservative Movement and, indeed, the entire Jewish world, in the years to come? The answers to these questions lie hidden in the one place neither reviewer chose to look: in the P'shat commentary.

***Etz Hayim*'s P'shat Versus Traditional P'shat**

Although P'shat is the simple, plain or literal meaning of the text, any effort to understand the words of the Torah at this level must make reference to their historical, literary and linguistic context. Of critical importance in this regard are assumptions about the very nature of Torah, namely, who wrote the text, in what historical period and for what purpose. And it is precisely these assumptions which put *Etz Hayim* beyond the pale of traditional Torah exegesis, and reveal the etiology of the Conservative Movement's theological malaise.

Documented by the Talmud, traditional Jewish interpretation holds that the entire Torah, from the first word in Genesis until the last word in Deuteronomy, is the immutable word of God given to, and transcribed exactly by, Moses.⁷ In contrast to this, the approach which the Conservative Movement has adopted in *Etz Hayim* dates back about 130 years, and derives from the theories of a German Protestant theologian, Julius Wellhausen, who in his book *Prolegomena to the History of Ancient Israel* posited that the Pentateuch was not a single document, but rather a patchwork of documents written anonymously by different individuals or groups of individuals over a period of several centuries.⁸ This interpretive approach is known as the Documentary Hypothesis, or, more often, as modern biblical criticism.

Whereas Wellhausen was unequivocal in his contention that most of the Pentateuch's

authors were motivated by socio-historical concerns rather than theological ones,⁹ the official position of the Conservative Movement, as articulated by *Etz Hayim*'s senior editor David Leiber, is that all of these authors were "inspired prophets, priests and teachers".¹⁰ However, Elliot Dorff points out that within the Conservative rabbinate there is quite a wide range of views on just what "inspired" means. While there are Conservative rabbis who believe that God actually communicated with the Torah's authors in words, the overwhelming majority do not.¹¹ And there are even prominent Conservative rabbis who do not consider the authors of the Pentateuch to have been God-inspired in any way.¹²

In order to appreciate the yawning chasm that separates the Conservative Movement's approach to P'shat from normative Jewish tradition, it is important to first understand how the same ancient text can support two such antithetical sets of assumptions, one which presupposes the unity of the Torah and the other its essential disunity. A consideration of Deuteronomy, the last of the five books of the Pentateuch, is particularly instructive in this regard.

The earliest name of the Book of Deuteronomy, "*Mishne Torah*" ("the Repetition of the Torah"), emphasizes the unique nature of this book, which is filled with repetitions of the history and laws which were presented in the four previous books of the Torah. These repetitions, however, are usually not exact. There are stylistic, grammatical, terminological and contextual differences between the laws presented in Deuteronomy and those in Exodus, Leviticus or Numbers. For example, in Exodus we find that the fourth of the Ten Commandments reads "Remember the Sabbath Day" ("*zachor et yom ha'Shabbat*"), whereas in Deuteronomy it reads "Observe the Sabbath Day" ("*shamor et yom ha'Shabbat*"). And in the deuteronomic repetition of the Jewish dietary laws, which originally appeared in chapter 11 of Leviticus, we find mention of certain permitted animals, such as the hart and the deer, that were not specifically mentioned in Leviticus.

Traditionally, these differences are understood as reasonable in light of the narrative context of the Torah. In his introduction to Deuteronomy, Rabbi Moshe Ben Nachman (Ramban) writes:

This book is known to constitute a review of the Torah, in which Moses our teacher explains to the generations entering the Land most of the commandments of the Torah that pertain to Israelites [as distinguished from the priests]...The Israelites... are admonished time and again about the commandments that apply to them, sometimes to add further clarification and sometimes only to caution the Israelites with multiple warnings.¹³

Although those who hold by the Documentary Hypothesis use these stylistic, grammatical and terminological differences as evidence of multiple authorship, the crux of their argument lies not in these discrepancies in the text, but rather in discrepancies which suggest contradictions in the text, where one law or historical fact is seemingly irreconcilable with its repetition. We find an example of such a seeming contradiction in

Deuteronomy chapter 12. Here Moses tells the people that when they first get to the Promised Land, and there will not yet be a centralized site for sacrifices, as there had been for the people throughout their wanderings in the desert, they may make certain sacrifices on private altars. In Deut. 12:8, Moses makes a distinction between how the people currently conduct their sacrifices and how they will do it upon entering the Promised Land: "You shall not do everything that we do here today -- every man what is proper in his eyes".

In *Etz Hayim*, we find the following P'shat commentary on the phrase "every man what is proper in his eyes":

This implies that at the time of Moses' address, Israelites were permitted to offer sacrifices wherever they wished. But Lev. 17:1 - 9 states that a restriction of sacrifice to a single place -- the Tent of Meeting -- had been commanded earlier, in the wilderness.

The *Etz Hayim* commentary is pointing out a seeming contradiction between this verse in Deuteronomy and the verses in Leviticus. How is the contradiction resolved at the P'shat level? The commentary continues:

Modern scholars assume that Deuteronomy was not aware of Lev. 17, which they assign to a different source.

In contrast to this, within Talmudic tradition each textual discrepancy, whether stylistic, grammatical, terminological or even seemingly factual, is understood at the P'shat level to reveal a new aspect of God's will. In fact, classic P'shat commentary is predominantly based upon reconciling textual discrepancies, while maintaining the unalterable assumption of the text's unity in authorship.

For instance, the phrase in Deut. 12:8, which biblical critical scholars posit as evidence of the Torah's multiple authorship -- "every man what is proper in his eyes" -- is interpreted at the P'shat level quite differently within a rabbinic tradition that assumes the unity of the Torah. Thus Rabbi Shlomo ben Yitzchak (Rashi), perhaps the most pre-eminent rabbinic Torah commentator, well-known for his singular focus on the P'shat level of the text, interprets the phrase "every man what is proper in his eyes" not as a statement of the current sacrificial practice of the Israelites in the wilderness, but rather as a description of the free-will sacrifices that each Israelite would be permitted to offer on his private altar *after* entering the Land (that is, each man would be permitted to offer the free-will offering which he deemed appropriate). By assuming the unity of the Torah in his P'shat interpretation, Rashi is able to use the apparent discrepancy to derive new information about how God wanted the people to behave in the years between entering the Promised Land and establishing a central site for sacrifices.

The Halakhic Implications of P'shat

Although the previous example highlights the antithetical nature of the P'shat interpretations which result directly from the different sets of assumptions about the

text's authorship, the theological implications of these different interpretations are not readily apparent. That is, whether one accepts *Etz Hayim's* P'shat interpretation of Deut. 12:8 or Rashi's would seem to make little difference in how one chooses to practice Judaism today.

There are, however, numerous instances of deuteronomic repetitions and discrepancies whose interpretations at the P'shat level *do* seem to have halakhic implications which are still relevant to contemporary Jewish practice. For example: from considering the third repetition of the injunction "*lo tivashel g'di b'chalev imo*" ("do not cook a kid in its mother's milk") in Deut. 14:21 (the injunction previously occurred in Ex. 24:11 and Ex. 34:21), the Rabbis learn that not only is it forbidden to cook or eat a mixture of milk and meat, it is also forbidden to derive any personal benefit from such a mixture.¹⁴ And from the different way in which the holiday of Passover is prefaced in the third repetition of the festivals, found in Deut. 16:1 -- "*shamor et chodesh ha'aviv*" ("observe the month of spring"), the Rabbis of the Talmud derive the necessity of adding a leap month to the Jewish calendar 7 times every 19 years, to ensure that Passover always falls in the "month of spring".¹⁵

As the examples above evidence, the Talmudic rabbis derive concrete behavioral prescriptions from the textual discrepancies they find, but only because they assume that at the P'shat level these discrepancies were consciously woven into the Torah by its single author, and not, as the critical scholars contend, artifacts of multiple authorship. There is, however, no such connection between the P'shat interpretations that modern biblical criticism yields and Halakhah. In fact, there is an inherent contradiction between the two. For when the examples cited above are viewed through the lens of modern biblical criticism, they lose all halakhic significance. This is because modern critical scholars do not use these repetitions to learn about the intention of God's word, but rather about the different historical, theological and political orientations of the text's various authors. So, for example, where the rabbinic Sages learn from the third repetition of the phrase "*lo tivashel g'di b'chalav imo*" ("do not cook a kid in its mother's milk") the injunction against deriving any personal benefit from the mixing of milk and meat, modern critical scholars find in this phrase no new divine commandment, only evidence for a second, or perhaps a third, author of the Torah.

The Theological Quandary of Conservative Judaism

Having publicly identified itself with an interpretation of P'shat which denies the unity of the Torah, the Conservative Movement is now in a serious theological quandary. For as a movement which swears fealty to Halakhah,¹⁶ its rejection of the most fundamental theological assumption of the rabbis who derived that Halakhah from the text is seemingly self-contradictory.

Yet Joel Roth, professor of Talmud at the Jewish Theological Seminary, argues that there is no contradiction in the Conservative Movement's position, if one considers the

essential nature of the halakhic process as it is delineated in the Talmud:

[T]he halakhic system *qua* system is independent of any considerations of the historical claims of its basic norm. Whether or not it is “true” that the Torah embodies the word and will of God is of great historical and theological significance, but of no legal significance.¹⁷

In dissociating Halakhah from any P’shat level consideration of the nature of Torah, Roth is making an extremely provocative claim, one which would seem to be pivotal in maintaining the legitimacy of Conservative Judaism as a halakhic movement. But is this claim correct?

In Roth’s favor is the fact that the vast majority of halakhic rulings are extracted from the Torah by means of a well-defined set of deductive rules that are part of the methodology found exclusively at the Drash level of exegesis.¹⁸ Thus, while there is a clear and direct relationship within rabbinic tradition between Drash and Halakhah, P’shat, at least on the face of it, plays little role in the development of either.

But such a superficial understanding of P’shat belies this level’s true exegetical status within normative Judaism, a status which the rabbis of the Talmud encapsulate in the dictum “*ayn hamikra yotzei midey peshuto*”¹⁹ (“A verse cannot depart from its plain meaning (p’shat)”). Understood most simply, this means that an halakhic interpretation at the Drash level which is used to derive Halakhah can not contradict its literal interpretation at the P’shat level.

There is, however, a more profound aspect to this halakhic principle, one which suggests an underlying reason for the proscription against contradicting P’shat. Ramban explains that “*ayn hamikra yotzei midey peshuto*” comes to teach that P’shat is not just an exegetical category separate from, but related to, Drash; it is rather the *primary* category through which all other levels of interpretation, including Drash, must be approached.²⁰ Summing up the approach of the talmudic rabbis, Cooperman explains that P’shat determines the essence of a verse’s meaning, which the Drash can elaborate upon but never change. As such, P’shat fixes the parameters within which Drash must function.²¹

The source of this rabbinic understanding of the primacy of P’shat is the very belief about the nature of P’shat that Roth and the Conservative Movement reject -- that God’s will is expressed in every word and letter of the Torah. Thus, P’shat is viewed by traditional interpreters as the gateway to all other levels of interpretation precisely because it is the primary expression of God’s will, upon which any subsequent level of interpretation can only elaborate. This understanding of P’shat clearly contradicts Roth’s contention that the halakhic system “is independent of any considerations of the historical claims of its basic norm.” Not only are rabbinic claims about the divine nature of P’shat the very *raison d’être* of the halakhic system, but as the talmudic dictum “*ayn hamikra yotzei midey peshuto*” makes clear, these claims have always been an integral part of the halakhic process as well.

The Conservative Movement's Theology and its Consequences

Armed with a clearer understanding of the theology of the Conservative Movement and how it diverges from normative Jewish tradition, it is now time to return to the questions raised at the outset of this paper. First, let us address the issue of why the movement's theological stance is, and has always been, inconsistent and vague.

Multiple Inconsistencies

As we have previously noted, Halkin proposes that the inconsistency of the Conservative Movement is best exemplified in the Drash section of *Etz Hayim*. It is here that he pinpoints the contradictory tendencies of the movement: to embrace rabbinic midrashic exegesis when deriving traditional aspects of the Law, but to reject it, without explanation, when deriving non-traditional aspects. Halkin further correlates this exegetical inconsistency with the long-held perception of Conservatism as standing for "fuzzy compromises"²² in its approach to halakhic practice, sometimes accepting rabbinic law while at other times changing it or simply ignoring it.

Although Halkin has hit upon a fundamental contradiction of Conservative Judaism, what he sees as a single inconsistency embodied in the Drash section of *Etz Hayim* and expressed in Conservative praxis can actually be broken down more finely into several inconsistencies. Moreover, each of these inconsistencies traces its source to the Conservative approach to P'shat, and in particular, the unwillingness or inability of the movement's rabbinic leaders to abide by the Talmud's most fundamental interpretive injunction, "*ayn hamikra yotzei midey peshuto*". And just as we have seen that there are two senses of this rabbinic dictum -- one which ensures that midrashic exegesis will not contradict P'shat, and the other which involves a deeper level of understanding of the interpretive primacy of P'shat -- so are there two different kinds of inconsistencies which are the result of not abiding by this dictum.

When P'shat and Drash Contradict

At the simplest level, any traditional midrash cited in *Etz Hayim* which relies on the specific wording of the text in order to derive Halakhah is in violation of "*ayn hamikra yotzei midey peshuto*". This is because in such a case, the traditional Drash level of interpretation contradicts the modern critical P'shat, which attributes the specific wording of the text to stylistic, rather than theological, choices of the author. An example of this violation of Conservative P'shat can be found in *Etz Hayim*'s Drash commentary to the first of the two pronouncements of the Fourth Commandment of the Decalogue. In Exodus, the wording of the commandment is "Remember (*zachor*) the Sabbath day and keep it holy" (Ex. 20:8), while the deuteronomic repetition reads "Observe (*shamor*) the Sabbath day to keep it holy" (Deut. 5:12). According to traditional halakhic midrash cited in *Etz Hayim*'s Drash commentary to Ex. 20:8, the positive commandments associated

with the Sabbath, such as the obligation to make *Kiddush*, are derived from the word “remember”, whereas the negative commandments, including all the forbidden kinds of work that must be avoided on the Sabbath, are derived from the word “observe”. And yet according to modern biblical critical P’shat, the verse from Exodus was written by an anonymous author or school of authors known as “P”, while the verse in Deuteronomy by a different anonymous author or school of authors.²³ In fact, it was, in part, the very repetition and discrepant wording of the two versions of the Decalogue that led biblical critical scholars to postulate more than one author.²⁴ It is therefore inconsistent for *Etz Hayim*’s editors to imply, as they do in the Drash commentary on these two verses, that the discrepant wording reflects two different aspects of God’s will regarding the Sabbath.

Much of Conservative halakhic praxis bears out this same inconsistency, in so far as the majority of commandments a Conservative Jew is obligated to observe – including when and how he is to celebrate the Sabbath and holidays, what he can and can’t eat, and his obligation to pray -- are derived by the Sages from the specific wording of the Torah using a fixed set of deductive principles and rules. But these halakhic practices are clearly inconsistent with an approach to the Torah which imputes no theological significance of the text’s formal features.

It is important to note here that Conservative scholars do not deny these inconsistencies, only the extent to which they challenge the integrity of Conservative Judaism. For as Roth has described above, the Conservative approach to the halakhic process is independent of beliefs about the nature of Torah. This does not mean, however, that traditional assumptions about the unity of the Torah are irrelevant to the Conservative halakhic system, but that they are *presupposed* by it. Roth maintains that the halakhic system, like any legal order, “requires of its adherents a ‘leap of faith’ concerning the validity of the basic norm of the system.”²⁵ In other words, although Conservative rabbis may utterly reject the traditional P’shat assumption that God dictated the entire Torah to Moses at Mt. Sinai, they must nonetheless presume such an idea to be true when engaging in the halakhic process.

But this temporary suspension of disbelief, rather than reducing the number of inconsistencies of Conservative textual interpretation and practice, actually multiplies them. In these cases, however, it is not the traditional Drash and Halakhah which contradict the modern biblical critical P’shat, but rather the reverse: Here we find instances of the halakhic implications of non-traditional midrashic analyses which contradict the traditional P’shat understanding of the text. For example, commenting on the halakhic implications of Lev. 21:7, “[The *kohanim* (priests)] shall not marry...a woman divorced from her husband,” the editors of *Etz Hayim* write:

Traditional Jewish law prohibits a *kohen* from marrying a divorcee or a convert. Nevertheless, if such a marriage took place, the marriage is considered valid and the children are legitimate, although they do not inherit their father’s priestly status. Because we no longer consider divorced women as

impaired, CJLS [Conservative Movement Committee on Jewish Law and Standards] has ruled to allow such marriages ab initio without any loss of priestly status for the man or his children.

The Conservative Movement's halakhic ruling to allow *kohanim* to marry divorced women directly contradicts the prohibition stated in Lev. 21:7, and therefore appears to be in clear violation of the talmudic dictum "*ayn hamikra yotzei midey peshuto*." And yet this ruling does not exist in a vacuum; within the traditional halakhic system to which the Conservative Movement lays claim, such a ruling is derived from the text midrashically. But if, as we are told in *Etz Hayim's* commentary, "traditional Jewish law prohibits a *kohen* from marrying a divorcee or a convert", how can the CJLS derive a ruling which states the opposite? Fortunately, the editors of *Etz Hayim* provide us with important insight into the midrashic reasoning behind this change in traditional Halakhah: according to the CJLS, *kohanim* are permitted to marry divorced women "because we no longer consider divorced women as impaired".

There is an interesting set of assumptions that underlie the CJLS's reasoning which is worth pointing out. First, there is an assumption about the purpose of the commandment in Lev. 21:7, namely, that *kohanim* are forbidden from marrying divorced women because they are somehow impaired. But this assumption itself is based on the assumption that in the mind of the verse's author, divorced women are indeed impaired. The CJLS further assumes that this judgment about divorced women is time and place specific, and therefore it can (and should) be adapted to variations in societal norms about divorced women.

Let us examine the assumptions of the CJLS's ruling more closely, because they reveal an important way in which the Conservative Movement has distanced itself from the traditional halakhic system to which its rabbinate claims faithful adherence. First of all, none of the above assumptions is supported by the written text. So while it is true that a few other commandments specified in the Torah have reasons for their having been commanded which are specified in the text,²⁶ there is no such accompanying explanation in the Torah for why a *kohen* is forbidden from marrying a divorcee. Nowhere does the text say or even imply that a divorced woman is blemished or impaired. And finally, while there are a small number of commandments which are designated in the text as being limited in their scope or applicability to a particular time and place,²⁷ no such limitation of time or place is put on the commandment in Lev. 21:7. In other words, according to a traditional P'shat level reading of the text, the commandment forbidding a *kohen* from marrying a divorcee applies to *kohanim* everywhere in every time. Furthermore, none of the assumptions which form the basis of the CJLS's halakhic ruling are supported by the oral tradition either. Nowhere in the Talmud can one find discussions of why a *kohen* is forbidden to marry a divorcee, what the defining qualities of a divorcee are which would render her unfit for marriage to a *kohen*, or how this commandment might be limited in its scope or applicability. Thus, not only is the CJLS's

halakhic ruling in violation of the rabbinic injunction “*ayn hamikra yotzei midey peshuto*”, but so, too, are the assumptions upon which the ruling is based.

Even more egregiously discrepant with talmudic tradition, however, is the fact that the CJLS bases its halakhic ruling on the imputed rationale of the commandment. Although there are occasions in the Talmud when the rationale for various commandments is discussed,²⁸ on no occasion is the Halakhah ever determined from its imputed rationale. Indeed, the talmudic expression “*ayn dorshin ta’ama d’kra*”²⁹ (“one cannot determine the halakhic consequences of the Torah from its expounded rationale”) is a fundamental operating principle of the traditional halakhic system, and a careful consideration of this expression will reveal that it is a corollary of the dictum “*ayn hamikra yotzei midey peshuto*.” For it is not only the *fact* of divine authorship which forms the basis of traditional P’shat interpretation, but also the *nature* of that authorship: while one can use a text to probe the mind and intention of its human author, this is not possible when the author is God, whose mind and intention are beyond human probing. Therefore, within rabbinic tradition, conjecturing what the purpose of a commandment might be and then using this rationale to determine the applicability of the commandment, is in violation of “*ayn hamikra yotzei midey peshuto*.”

And yet Dorff affirms that this is precisely the methodology which the Conservative Movement has adopted in its halakhic process: “[T]he Conservative Movement maintains that the purpose of the law in the first place is largely to concretize moral values, and so the specific form of the law can and should be changed if it is not effectively doing that.”³⁰ In fact, many of the halakhic changes which the CJLS has made, such as to laws concerning the rights and responsibilities of women, can be traced to this methodology, which clearly stands at odds with traditional halakhic process.³¹

Before embarking further on our exploration of the theological inconsistencies of the Conservative Movement which are revealed in the Drash commentary of *Etz Hayim*, it is perhaps useful to summarize the inconsistencies that we have already uncovered:

- 1) Conservative halakhic midrash and practice, when it *conforms* to rabbinic halakhic tradition, is inconsistent with Conservative P’shat interpretation, which accepts the modern biblical critical assumption that the Torah has multiple human authors. This inconsistency is a result of the fact that while normative halakhic midrash uses the specific wording of the Torah to derive Halakhah, modern biblical criticism uses the same formal features of the text to merely differentiate among the text’s many purported authors.
- 2) Conservative halakhic midrash, when it *deviates* from rabbinic halakhic tradition, is inconsistent with traditional P’shat in three ways:

- a) The Halakhic practice that is derived by means of Conservative midrashic reasoning is inconsistent with the plain meaning of the text.
- b) The assumptions about the rationale for the commandments found in the text, which form the basis for Conservative midrashic reasoning, are not supported by either the text itself or by traditional interpretations of the text.
- c) The methodology of using the imputed rationale of the commandments to determine their halakhic applicability is inconsistent with the traditional understanding of the text as having being written by God, whose intentions can never be definitively known by us.

A Precedent Within Traditional Exegesis?

One might make the case that the inconsistencies between P'shat and Drash are not unique to Conservative interpretations of Torah but exist in traditional rabbinic treatments of the text, as well. Rabbi Hayim Friedlander brings several examples of classical rabbinic commentators such as Ramban and Vilna Gaon, who occasionally propose interpretations of the scriptural P'shat which knowingly contradict midrashic halakhic interpretations of the Sages.³² Conversely, David Weiss Halivni, former Professor of Talmud at the Jewish Theological Seminary, offers several instances of halakhic midrash which knowingly contradict scriptural P'shat.³³ Taken together, these two sets of examples could be used to argue that Conservative P'shat which is inconsistent with rabbinic halakhic tradition, and Conservative halakhic midrash which is inconsistent with traditional P'shat, have legitimate precedent within rabbinic tradition.

In truth, however, neither of these provide support for the Conservative halakhic process. As far as traditional P'shat which contradicts midrashic Halakha is concerned, Drash need only be consistent with one valid P'shat of the text, not all of them. Commentators are thus free to suggest novel P'shat interpretations which are inconsistent with halakhic Drash, as long as they do not invalidate the P'shat upon which the Halakha rests. Yet by its very nature, Conservative P'shat consistently invalidates all traditional P'shat interpretations, including those from which Halakha is derived.

As for traditional halakhic midrash which contradicts P'shat, the Talmud indicates that there is only one such instance in all of Halakha.³⁴ Although Halivni offers other examples of halakhic midrash which contradict P'shat, even he admits that "Midrash Halakha's cues overwhelmingly come from within the text... [which] is the principal guide in determining what constitutes proper halakha".³⁵ As we have seen, this is not true of Conservative halakhic midrash, which is inconsistent with the plain meaning of the text.

Finally, both rabbis operate within a traditional rabbinic framework that ascribes an intimate and meaningful connection between P'shat and Drash, one which indeed serves to foreground the inconsistencies they find. However, the Conservative approach to scriptural exegesis, as we will soon see, rejects this entire exegetical framework, and with it the foundation of the halakhic system.

Denying the Traditional Exegetical Framework

One of the commonalities of the theological inconsistencies of the Conservative Movement is that they each pit two traditional exegetical categories – P'shat and Drash – against each other. Accordingly, an intellectually honest Conservative Jew who does not want his halakhic behavior to be inconsistent with his beliefs about the Torah must make a choice: either he accepts traditional Drash and rejects Conservative P'shat, or he accepts Conservative Drash and rejects traditional P'shat.

But the Conservative Jew's choice becomes considerably more difficult when he considers the true nature of P'shat and Drash. For as we noted previously, the rabbis who created these exegetical categories did not see them as being “separate but equal”. As understood talmudically, P'shat is not just the simplest interpretation of the Torah, it is its *primary* interpretation, because it is the primary expression of God's will. Any interpretation at the Drash level must take the P'shat understanding as its starting point.

Thus, the Conservative Jew is not like someone who is standing in front of two doors at the entrance to separate corridors leading to the true meaning of Torah, one marked “P'shat” and the other “Drash”, trying to decide which one he would like to enter. Rather, there is one door in front of him, and it is marked “P'shat”, and only once he has entered the corridor through this door can he approach the door marked “Drash”.³⁶

What will the Conservative Jew find behind the “Drash” door? That will depend on the P'shat interpretation he has pursued. If he accepts the traditional P'shat understanding that every word of the text is exactly as God dictated it to Moses, then he will find behind the “Drash” door a well-paved hermeneutical path leading from the Torah's words to what God intended them to mean. But if he rejects this understanding of P'shat and instead accepts the idea that the words of the Torah were written by many authors over many centuries, then he will find behind the “Drash” door the same well-paved hermeneutical path, now leading nowhere. The “Drash” path is a dead end in this case because the hermeneutical rules which were employed by the talmudic sages to extract meaning from the Torah presume God's words (i.e. traditional P'shat) as their input. Although these rules can be applied to any textual input, the output of the rules will not be religiously meaningful unless the input itself is similarly meaningful. Simply put, if the system's input is not of divine nature, then the system's output can never determine God's intention, and the application of the midrashic rules becomes a meaningless and futile exercise.

Now the Conservative Jew is faced with a real dilemma. On the one hand, he knows that if he accepts the traditional P'shat assumption of the divine authorship of the Torah, then the application of the midrashic rules to the text, and the halakhic output of those rules, will make perfect sense to him. (However, as we have noted above, he will still not be able to make sense of the midrashic rules and the resultant halakhic rulings which the Conservative Movement has established). On the other hand, he knows that if he accepts the Conservative assumption of the multiple authorship of the Torah, then the application of the midrashic rules and their halakhic output -- that is to say, the entire halakhic process -- make no sense to him at all.

At this point, our Conservative Jew, if he still desires consistency in his religious life, must make an extremely difficult decision: either he accepts traditional P'shat, Drash and Halakhah and rejects Conservative Judaism, or he accepts Conservative Judaism but rejects its halakhic status.

Denying Rabbinic Authority

Once again, we find that Conservative scholars do not deny this major theological inconsistency of Conservative Judaism, they only dispute the extent to which it impacts the integrity of the movement. Their case is based on the fact that while it is true that most of Jewish Law *can* be derived from the text by means of midrashic exegesis, it is also true that midrashic exegesis provides neither necessary nor sufficient grounds for the inclusion of the vast majority of the Law into the oral tradition.³⁷

Rambam highlights this point in the introduction to his *Commentary on the Mishnah*. He divides the laws derived from the Torah into three categories:³⁸

- 1) Laws for which there is an unambiguous oral tradition of their having been received and transmitted by Moses, which are also indicated in the verses of the Torah and can thus be extracted by analysis. There is no rabbinic disagreement about these laws.³⁹
- 2) Laws for which there is an unambiguous oral tradition of their having been received and transmitted by Moses, which have no scriptural source. There is no rabbinic disagreement about these laws.⁴⁰
- 3) Laws which lack an unambiguous oral tradition that can be traced back to Moses, but which can be derived from the Torah by reasoning (*sevarah*) and analysis (*drash*). These are the laws which are subject to extensive debate in the Talmud.⁴¹

Most of the basic laws of Judaism fall into Rambam's first two categories, which means that their uncontested acceptance into the corpus of Jewish Law is based on the strength of their oral transmission rather than on their derivation from the text by means of midrashic exegesis. As we have seen, traditional midrash not only presumes divine

authorship of the Torah, but is meaningless without such an assumption. However, an oral tradition which is not dependent on the wording of the Torah for its validity is not tied to the assumption of divine authorship in the same way.

This understanding of the Law has figured prominently in the Conservative Movement's approach to Halakhah. Since the movement's inception, it has embraced a "positive historical" approach to Judaism, whose primary thrust is the conservation of the laws for their positive historical value.⁴² According to Dorff:

Conservative Judaism insists on studying the tradition historically, and acting in accordance with the *mitzvot* has always been a key factor in what it means to be a Jew. No non-observant form of Judaism is historically authentic.⁴³

Thus, Conservative scholars can claim that even if they reject the assumption of the divine authorship of the Torah, they can still call the movement halakhic because of their acceptance of the historical authenticity of the oral tradition.

However, our intellectually honest Conservative Jew may detect yet another inconsistency in the Conservative scholars' reasoning, this one even more egregious than the previous ones. For after a careful consideration of rabbinic accounts of Jewish oral tradition, he will no doubt infer that for the purveyors of the oral law, the tradition's historicity is *itself* dependent on the assumption of divine authorship of both the written and oral law. Mishna Avot 1:1 is the clearest expression of this idea: "Moses received the Torah from [God at] Sinai and transmitted it to Joshua, and Joshua to the Elders, the Elders to the Prophets, and the Prophets transmitted it to the Men of the Great Assembly." Indeed, the very legitimacy of both the oral tradition and the rabbis who claim to have transmitted it is based on the historicity of the Mishna's account.

And yet it is the very historicity of this account which the Conservative Movement rejects. In one of the many essays at the end of *Etz Hayim*, Daniel Gordis claims that the Mishna's description of the historical origins of the oral tradition was a wholly new theological reading of revelation, "the product of the scholars of the Rabbinic period".⁴⁴ According to Gordis, the Sages' motivation for advocating this new model of revelation was to ensure their own place in the authoritative tradition by creating an image of themselves as being the recipients of an unbroken historical chain that began with God at Mt. Sinai. Another Conservative scholar, Gordon Freeman, attempts to put the rabbis' motivation into an historical-political context: "All the descriptions of the giving of the Torah made by the ancient rabbis were concerned with authenticating the Jewish polity that they were rebuilding after revolution and destruction."⁴⁵

And herein lies perhaps the greatest difficulty for the intellectually honest Conservative Jew: in claiming that the Sages invented the Mishna's account of the oral tradition for their own political ends, Conservative scholars are not only denying the historical basis of both the written and oral traditions, they are impugning the authority of the rabbis who make the claim for the tradition's historicity. How, then, can a Conservative Jew who accepts his movement's claims find "positive historical" value in such an historically

fraudulent tradition? And more importantly, why would such a Jew be motivated to observe the laws that come from it?

Vague and Intellectually Dishonest

Having exposed the multiple sources of the long-held perception that the Conservative Movement is inconsistent and even self-contradictory, it is time now to turn to a related perception, that the Conservative Movement is, and always has been, theologically vague. As noted previously, Wolf finds evidence of this trait in the Halakhah l'ma'aseh section of *Etz Hayim*. He suggests that it is exemplified in the commentary to Lev. 18:22, "Do not lie with a man as you lie with a woman; it is an abhorrence", which reads:

The Torah prohibits male homosexual relations, and the Sages understand the Torah to forbid lesbian relations as well (*Sifra Aharei Mot* 9:8). These prohibitions have engendered considerable debate. Conservative Movement resolutions call on congregations to welcome gay and lesbian congregants in all congregational activities.

Wolf contends that the Conservative Movement is being both vague and timid in not being more explicit about the "considerable debate" alluded to in *Etz Hayim's* commentary: "Why not give us a summary of these debates? They are public and well worth study. But, here again, caution prevails and a great moment for true explication passes without substantial enlightenment. Even the question is suppressed."⁴⁶

It is not surprising that Wolf chose *Etz Hayim's* commentary on the prohibition against homosexual behavior to instantiate his thesis. In 2002, Judy Yudof, the head of the United Synagogue of Conservative Judaism, called for the CJLS to revise its ban on gay and lesbian rabbis,⁴⁷ and the CJLS reopened the discussion in 2004.⁴⁸ Should the CJLS decide to overturn its earlier ban on ordaining openly gay and lesbian rabbis, it is not only Conservative thinking and practice which will stand at odds with tradition, but Conservative Halakhah as well. Thus, the public debate on this issue, which Wolf so desires, could not be more timely and important for understanding in which halakhic direction the Conservative Movement is headed.

Although Wolf is essentially correct in his assessment that the movement has been extremely cautious in its public discourse about this issue, there have been statements by key rabbinic figures in the CJLS which give insight into the "considerable debate" which Lev. 18:22 has engendered within the movement. Two such statements appeared in the Spring 2004 *United Synagogue Review*, one by Joel Roth and the other by Elliot Dorff, with each rabbi addressing the question of the halakhic status of homosexuality. Roth argued that within the parameters of the halakhic system, there is no way to sanction homosexual behavior, and he opposed altering the laws pertaining to homosexuality in any way.⁴⁹ Dorff, citing moral and medical reasons, argued that the laws should be changed.⁵⁰

On careful analysis, the halakhic arguments of both Roth and Dorff bear out the same inconsistencies that we have enumerated above. To the extent that Roth upholds traditional midrashic analysis and Halakhah, which is based on the assumption of divine authorship of Lev. 18:22, his argument is inconsistent with the Conservative P'shat understanding of the verse as having been written by a particular human author for reasons that may no longer be relevant in our own age. Dorff, on the other hand, uses this Conservative P'shat as the starting point for his midrashic analysis, which therefore exhibits the same three textual inconsistencies as the CJLS ruling on the halakhic status of a *kohen* married to a divorcee, cited above:

- 1) Dorff's midrashic reasoning is inconsistent with the plain meaning of the text, which categorically forbids homosexual behavior.
- 2) Dorff's assumptions about the rationale of the commandment in Lev. 18:22 – that it is motivated by a desire to prevent promiscuity and encourage monogamy – is not supported by either the written text of the Torah or the oral tradition.
- 3) Dorff's use of the presumed rationale of Lev. 18:22 to determine its halakhic applicability is itself inconsistent with the traditional halakhic midrashic process, which prohibits such considerations from influencing the determination of Halakhah.

Moreover, Dorff's application of traditional halakhic thinking to a text which he does not consider to have been written by God belies the very *raison d'être* of the traditional halakhic midrashic process, namely, to determine the will of God from the specific words of the text.

How do these inconsistencies relate to the vagueness and timidity which Wolf discovered in the Halakhah le'ma'aseh section of *Etz Hayim*? One obvious answer is that the inconsistencies threaten the theological integrity of the movement. Roth himself contends: "The Conservative Movement is a halakhic movement, recognizing the halakhic system as binding and authoritative upon us, individually and collectively. If we are not that, we should close up shop and admit that our Movement has no claim to normative Jewish authenticity and, therefore, no good reason to exist."⁵¹ To the extent that an exposure of these inconsistencies threatens the very existence of Conservative Judaism, it is not surprising that few, if any, of the movement's rabbinic leaders are willing to make public those issues which could lead to such exposure.

But there is another possible source of the vague attitude which Wolf has noted. Although they differ in their halakhic perspectives, both Roth and Dorff concur with each other and with other Conservative thinkers in rejecting the traditional account of the divine revelation of both the written Torah and its oral interpretation.⁵² As we have previously discussed, there is an inherent and troubling contradiction in basing the movement's acceptance of the rabbinic oral tradition on its positive historical value, while at the same time denying the historicity of the rabbis' account of that tradition. And

yet without an historic connection to the very same rabbis whose historical legitimacy they question, Conservative rabbis *themselves* would have no claim to rabbinic authority.

This idea is brought out in the *Etz Hayim* commentary on the following verses, Deut. 17:8 – 9:

If a case is too baffling for you to decide, be it a controversy over homicide, civil law, or assault – matters of dispute in your courts – you shall promptly repair to the place that the Lord your God will have chosen, and appear before the levitical priests, or the magistrate in charge at the time, and present your problem...

Here is the *Etz Hayim* Halakhah l'ma'aseh commentary on the phrase “the magistrate in charge at the time”:

The Sages, understanding “judge” as the literal meaning of the Hebrew word translated as “magistrate,” explained that every generation requires a rabbinical court to apply Jewish law to that generation’s particular circumstances (BT RH 25a-b). Guided by the CJLS, the local rabbi (as *mara d’atra*, literally, “teacher of the place”) has this authority and fulfills this responsibility for Conservative Jews (see Exod. 18:21 – 22).

This commentary makes clear that the authority of Conservative rabbis to be arbiters of Jewish Law – historically, the primary role of a rabbi – comes directly from the authority which the Sages, through a process of midrashic analysis, derived from the Torah. However, as illustrated by Mishna Avot 1:1, the Sages’ authority to interpret the text in this way, and indeed, to interpret the text *at all*, comes from their historical claim to being links in the unbroken chain which originated with God and Moses at Mt. Sinai. Exposing the fact that Conservative rabbis openly reject this claim while at the same time enjoy the benefits of the authority it bestows upon them, calls into question the very legitimacy of the Conservative rabbinate. Here again, it is not surprising that few within the movement are willing to highlight this theological discrepancy.

There is one final point to consider about the vagueness of the Conservative Movement, which is related to the fact that this trait has long been associated with Conservative Judaism. As Wolf points out, Mordecai Kaplan, who began his more than five-decade tenure at the Jewish Theological Seminary in 1909, criticized his own movement, early in its history, for its “non-committal and cowardly” attitude to Halakhah. Moreover, although *Etz Hayim* contains the movement’s most explicit and public proclamation of its reliance on a brand of scholarship that rejects traditional assumptions about the unity of the Torah, this type of scholarship has been taught at Conservative rabbinical seminaries since their inception. Solomon Schechter, architect of the Conservative Movement and the first president of the Jewish Theological Seminary, wrote: “We must insist that the teaching in the Seminary be conducted along scientific lines.” He therefore introduced the idea of applying the methodologies of modern biblical criticism to the study of Bible and Talmud, and training in this kind of scholarship became *de rigeur* for all rabbis who studied at the Seminary.⁵³ Once again, even this early correlation of the movement’s

vagueness with its rejection of the most essential assumptions of the Sages is striking, though not surprising. It does, however, reveal the source of a deep intellectual dishonesty that has plagued the movement from its inception until now.

***Etz Hayim* and the Future of the Conservative Movement**

At the end of his review of *Etz Hayim*, just after having branded Conservative Judaism a movement of inconsistency and compromise at the highest intellectual levels, Halkin writes something startling:

Yet this also remains the source of [the movement's] strength. For it is as such a vaguely defined middle ground that the 40 percent or so of all synagogue-affiliated American Jews who belong to Conservative congregations would appear to view themselves. Compromise is often messy and rarely satisfying, but it is the stuff of life. How strenuously can one object to its being the stuff of the Tree of Life?⁵⁴

Far from seeing these theological problems as a hindrance to the movement, Halkin sees them as contributing to its continuing success. Wolf, too, finds positive aspects of *Etz Hayim* which he feels are “stunning and powerful reminders of what a commentary could do to help American Jews recover their spiritual heritage.”⁵⁵

The Jewish demographic data, however, do not support either Halkin's or Wolf's optimism for the future of the Conservative Movement. The most recent National Jewish Population Survey 2000 – 2001 revealed declining Conservative affiliation and halakhic observance among Conservative Jews: Nearly half of all Jews who were raised Conservative no longer consider themselves to be so, with the vast majority of these moving to less, rather than more, observance.⁵⁶ In addition, a comparison of the two movements which call themselves halakhic -- Conservative and Orthodox --reveals that there is a sharp contrast between them with respect to the halakhic observance of their respective adherents. For example, while approximately 86% of Orthodox Jews keep kosher at home,⁵⁷ only 26% of Conservative Jews do.⁵⁸ Indeed, in his keynote address at a recent biennial conference of the United Synagogue of Conservative Judaism, Rabbi Neil Gillman, professor of Jewish Philosophy at the Jewish Theological Seminary, said there was little difference between the religious practice of Conservative and Reform Jews outside of the synagogue and argued that it was intellectually dishonest for the Conservative movement to call itself halakhic.⁵⁹

Although there are undoubtedly many factors which contribute to declining halakhic observance among Conservative Jews, the theological inconsistency, vagueness and intellectual dishonesty of the movement cannot help but be among them. Moreover, the publication of *Etz Hayim*, with the movement's most explicit statement to date of its acceptance of modern biblical criticism as the basis for its interpretation of Torah, can only speed the demographic trend by highlighting these troubling theological discrepancies.

In this regard, it is interesting to note that the German Protestant theologian Julius Wellhausen, whose name is most closely associated with the promulgation of the Documentary Hypothesis and modern biblical criticism, noticed a similar trend among his theology students at seminary:

I became a theologian because the scientific treatment of the Bible interested me; only gradually did I come to understand that a professor of theology also has the practical task of preparing the students for service in the Protestant Church, and that I am not adequate to this practical task, but that instead despite all caution on my own part *I make my hearers unfit for their office.*⁶⁰ [emphasis added]

While Wellhausen may have despaired over the effect that his theories of the Bible had on his co-religionists, he would most likely have delighted in their effect on the Jewish world, for Wellhausen was widely acknowledged as an anti-semite.⁶¹ Silberman contends that Wellhausen's work on the Hebrew Bible, "like practically everything written by German Protestant theologians of the period and many subsequently and to this day, is a work of anti-Judaism."⁶² Even a cursory survey of Wellhausen's work makes clear the way in which he was motivated to chip away at the fundamentals of traditional Jewish belief and practice. For Wellhausen's anti-semitic animus was directed particularly against Jewish Law, which he endeavored to show was a late development in the history of Israel, and "impressed on the tradition by men who regarded history exclusively from the point of view of their own principles."⁶³ Elsewhere Wellhausen writes:

It is not the case that the Jews had any profound respect for their ancient history...It is well known that there never have been more audacious history-makers than the Rabbins. But Chronicles affords evidence sufficient that this evil propensity goes back to a very early time, its root, the dominating influence of the Law, being the root of Judaism itself."⁶⁴

Given Wellhausen's anti-semitic animus and the way in which he wove it into the theory he developed, it is not surprising that many who embrace the Documentary Hypothesis have little regard for Halakhah and traditional rabbinic authority.⁶⁵ What *is* surprising, however, and indeed extremely troubling for the future of Conservative Judaism, is the way in which Wellhausen's anti-Jewish theories have been embraced by the Conservative rabbinate and are now an essential part of Conservative theology⁶⁶.

Conclusions: The Conservative Movement and Klal Yisroel

Despite his anti-semitic sentiments, Wellhausen was correct in his assessment of the Law as being "the root of Judaism itself". For whatever one might believe about the origins of Halakhah and the halakhic process, few would dispute how essential these have been for sustaining Judaism throughout the centuries.⁶⁷ By swearing fealty to Halakhah while at the same time rejecting entirely the textual and historical assumptions which have always

supported it, the Conservative rabbinate is effectively redefining Halakhah, and with it, Judaism itself. Such a redefinition cannot help but have serious consequences for the entire Jewish world, and it therefore demands considerable intellectually honest discussion and debate among all those who care about the future of Judaism. As the only other halakhic movement, Orthodox Judaism would have a particularly high stake in participating in this discussion, since the Conservative Movement's redefinition of Halakhah challenges the very authenticity and legitimacy of Orthodoxy.

Interestingly, in the summer of 1980 such an interdenominational debate took place in the pages of JUDAISM. At the request of JUDAISM's then editor, Robert Gordis, scholars from all streams of Judaism were invited to respond to an article written by Gordis himself which had appeared in the winter 1979 issue of the journal. In his article "A Dynamic Halakhah: Principles and Procedures of Jewish Law", Gordis, who at the time was also president of the Conservative Rabbinical Assembly, detailed the Conservative approach to Halakhah and how it differed from Orthodoxy.⁶⁸ Seventeen scholars from each of the major movements – Reform, Reconstructionist, Conservative and Orthodox -- responded to Gordis' invitation.⁶⁹ The result is a fascinating look at how the Conservative Movement's approach to Jewish Law is viewed through the lens of each movement.

However, that debate took place almost a quarter century ago, well before the Conservative Movement clearly and publicly articulated its commitment to modern biblical criticism and theories of the multiple authorship of the Torah. With the publication of *Etz Hayim*, it is time to renew this vital discussion.

¹ Personal communication with Rabbi Jerome Epstein, Executive Vice-President United Synagogue of Conservative Judaism.

² Hillel Halkin, "Boiling a Kid': Reflections on a New Bible Commentary," *Commentary* 115 (April 2003):37 – 43.

³ Arnold Jacob Wolf, "The Perils of P'shat," *JUDAISM* 205/206 (Winter/Spring 2003): 103 – 107.

⁴ Halkin, p. 43.

⁵ Wolf, p. 104.

⁶ Wolf, p. 104.

⁷ The authorship of the Torah is discussed in the Babylonian Talmud (BT) Baba Batrah 14b. There is a complete listing of the authors of each of the books of Tanach. Only Moses is named as the writer of the five books of the Torah. (A question is, however, raised about the last eight verses of Deuteronomy, which report Moses' death. The Talmud gives two replies to this question: the first is that Moses wrote those verses in tears, and the second is that Joshua wrote them). In BT Sanhedrin 99a, the Talmud makes explicit that every detail of the Torah text comes from God, and nowhere in talmudic literature can a dissenting opinion to this position be found. Rabbi Moses ben Maimon (Rambam) elaborates further on this traditional understanding in his famous thirteen articles of faith (commentary to the Mishna, introduction to the tenth chapter of Sanhedrin), in the 8th article:

We are to believe that the whole Torah was given us through Moses our Teacher entirely from God... There is no distinction between a verse of scripture like "The sons of Ham were Cush and Mitzraim" (Gen. 10:6), or "His wife's name was Mehetabel and his concubine was Timna" (Gen. 36:39, 12), and one like, "I am the Lord your God" (Exodus 20:2), or 'Hear, O Israel, God is our Lord, God is One' (Deut. 6:4). All came from God, and all are the Torah of God, perfect, pure, holy and true.

(From Isadore Twersky, editor, *A Maimonides Reader* (West Orange, N.J.:Behrman House, Inc., 1972), pp. 420 – 421).

⁸ Julius Wellhausen, *Prolegomena to the History of Ancient Israel* (New York: Meridan Books, 1957).

⁹ Douglas A. Knight, “Wellhausen and the Interpretation of Israel’s Literature”: *Semeia* 25 (1982): 27.

Knight writes, “Among Wellhausen’s considerable contributions to the study of the biblical literature is his refinement of the method of *Tendenzkritik*. At virtually every point in his study of literary sources throughout the *Prolegomena*, he considered it of paramount importance to determine the writer’s *Tendenz* – the intention, including the specific point of view which stands behind it.”

¹⁰ David E. Lieber senior editor, *Etz Hayim Torah and Commentary* (New York: Jewish Publication Society, 2001), p. xxi.

¹¹ Elliot N. Dorf, “Medieval and Modern Theories of Revelation” in *Etz Hayim Torah and Commentary*, p. 1404.

¹² Elliot N. Dorf, *Conservative Judaism: Our Ancestors to our Descendants* (New York: National Youth Commission, United Synagogue of America), pp. 114 – 115.

¹³ Rabbi Dr. Charles B. Chavel, editor, *Ramban (Nachmanides) Commentary on the Torah, Deuteronomy* (New York: Shilo Publishing House, Inc.) p. 3.

¹⁴ BT Chulin 108:a. This law would, for instance, forbid a Jew from selling cheeseburgers.

¹⁵ BT Rosh Hashanah 21:a.

¹⁶ Elliot N. Dorf, *Conservative Judaism: Our Ancestors to our Descendants*, p. 60. Dorff writes, “The first thing that you must understand about the Conservative approach to Jewish law is that *Conservative Judaism requires observance of the laws of classical Judaism*, including the dietary laws (*kashrut*), the Sabbaths and Festivals, daily and Sabbath worship, and the moral norms of the Torah, Prophets, and Sages.”

¹⁷ Joel Roth, *The Halakhic Process* (New York: The Jewish Theological Seminary of America, 1986) p.9.

¹⁸ Nathan T. Lopes Cardozo, *The Written and Oral Torah* (Northvale, New Jersey: Jason Aronson Inc.), pp. 137 – 165. Cardozo describes the 13 hermeneutical rules enumerated in the introduction to *Sifra*, which investigate “the inner, logical, intended and true meaning of a particular text and the inter-relationship of its words”(p. 132), in order to arrive at their halakhic intent.

¹⁹ BT Shabbath 31; BT Yebamoth 24a.

²⁰ Yehuda Cooperman, *Peshutu shel Mikra* (Jerusalem: Irving Cymberknopf Publication Foundation, 2001) p. 25.

²¹ Cooperman, p. 26.

²² Hillel Halkin, “‘Boiling a Kid’: Reflections on a New Bible Commentary,” p. 38.

²³ Friedman, *Who Wrote the Bible?*, pp. 251, 255.

²⁴ Friedman, *Who Wrote the Bible?*, p. 53.

²⁵ Roth, *The Halakhic Process*, p. 8.

²⁶ See, for example, Ex. 22:25 – 26: “If you take your fellow’s garment as security, until sunset you shall return it to him. For it alone is his clothing, it is his garment for his skin – in what should he lie down?”

²⁷ See Deut. 12:8, as cited above, as an example of commandments regarding sacrifices which were dependent upon when the Hebrew people would establish a central site for sacrificing after entering the Promised Land.

²⁸ See BT Bava Metzia 115a; BT Kedushin 21a, 68b; BT Gittin 49b; BT Sota 8a; BT Yebamoth 23a; BT Sanhedrin 16b, 21a; BT Menachot 2b; BT Yuma 42b.

²⁹ BT Yebamoth 23a.

³⁰ Dorff, *Conservative Judaism: Our Ancestors to our Descendants*, p. 160.

³¹ Dorff, *Conservative Judaism: Our Ancestors to our Descendants*, p. 160. Dorff writes, “In many Conservative decisions moral injustice, or the opportunity to encourage greater moral sensitivity, has been the primary motivation for revising the law.”

³² Chaim Friedlander, *Siftey Chayim: Pirkei Emunah u’Vechira* Vol. 2 (B’nei Brak: 2000) pp. 259 – 261.

³³ David Weiss Halivni, *Peshat and Derash* (New York: Oxford University Press, 1991) pp. 128 - 132.

³⁴ In Yevamot 24a, Rava notes the single case of halakhic midrash which deviates from P’shat : ‘Even though [the principle] in the entire Torah is *ayn hamikra yotzei midey peshuto*, here (Devarim 25:6) [a derasha of] a *gezerah shaveh* takes [the verse] entirely out of its peshat meaning...’ “(Yevamot 24a).

³⁵ Halivni, *Peshat and Derash*, p. 159

³⁶ Based on an analogy by Cooperman, *Peshutu shel Mikra*, p. 24.

³⁷ Roth, *The Halakhic Process*, p. 16.

³⁸ Cardozo, *The Written and Oral Torah*, p. 99.

³⁹ For example, the 39 categories of labor, which constitute a definition of the work that is prohibited on the Sabbath, are derived from the textual relationship between the commandment about observing the Sabbath (Ex. 35:2) and the many verses following it which detail the kinds of work involved in constructing the tabernacle. (BT Shabbath 73b – 75b).

⁴⁰ For example, many aspects of *tefillin* (phylacteries), such as that they must be square and have black straps, are understood as Halakhah l'Moshe MiSinai, laws given to Moses at Sinai, for which no scriptural basis can be found. (BT Menahoth 35a).

⁴¹ Cardozo notes that talmudic conflicts of opinion were always limited in scope, and never arose concerning basic principles of the Law, only specifics. So, for example, while there is no dispute in the Talmud over the obligation to eat in a sukkah, there are disagreements about the sukkah's maximum height, minimum number of walls and which materials were fit for its roof. (From Cardozo, *The Written and Oral Torah*, pp. 109, 112).

⁴² Dorff, *Conservative Judaism: Our Ancestors to our Descendants*, p. 25.

⁴³ Dorff, *Conservative Judaism: Our Ancestors to our Descendants*, p. 60.

⁴⁴ Daniel Gordis, "Revelation: Biblical and Rabbinic Perspectives" in *Etz Hayim Torah and Commentary*, p. 1394.

⁴⁵ Gordon Freeman, "Revelation as Authority," *Conservative Judaism* 46 (Fall, 1993): 68.

⁴⁶ Wolf, pp. 106 – 107.

⁴⁷ Alana Newhouse, "Conservative Chiefs Push to End Gay Pulpit Ban," *The Forward*, Dec. 20, 2002.

⁴⁸ Jay Michaelson, "A Watershed Year for Gays of Faith," *The Forward*, Jan. 2, 2004.

⁴⁹ Joel Roth, "We Can't Legitimate Homosexuality Halakhically," *United Synagogue Review* 56/2 (Spring 2004).

⁵⁰ Elliot N. Dorff, "Medical and Moral Reasons to Change the Law," *United Synagogue Review* 56/2 (Spring 2004).

⁵¹ Roth, "We Can't Legitimate Homosexuality Halakhically," p. 26.

⁵² Dorff, "Medieval and Modern Theories of Revelation," p. 1404.

⁵³ Neil Gillman, *Conservative Judaism ; The New Century* (West Orange, N.J.: Behrman House, Inc., 1993), p. 51.

⁵⁴ Halkin, p. 43.

⁵⁵ Wolf, p. 104.

⁵⁶ "National Jewish Population Survey: Conservative Jews", <http://www.ujc.org/getfile.asp?id=5086>.

⁵⁷ "National Jewish Population Survey: Orthodox Jews", <http://www.ujc.org/getfile.asp?id=4983>.

⁵⁸ "National Jewish Population Survey: Conservative Jews", <http://www.ujc.org/getfile.asp?id=5086>.

⁵⁹ "Conservative Leaders Call For New Openness", *The Jewish Week*, January 15, 2006

<http://www.thejewishweek.com/news/newscontent.php3?artid=11773>

⁶⁰ Rudolf Smend, "Julius Wellhausen and his *Prolegomena to the History of Israel*": *Semeia* 25 (1982): 6.

⁶¹ In an address that Solomon Schechter delivered in 1903 entitled "Higher Criticism – Higher Anti-Semitism," he said: "Wellhausen's Prolegomena and History are teeming with *apercus* full of venom against Judaism." From Lou Silberman, "Wellhausen and Judaism": *Semeia* 25 (1982): 75.

⁶² Lou Silberman, "Wellhausen and Judaism": *Semeia* 25 (1982): 75.

⁶³ Wellhausen, *Prolegomena to the History of Ancient Israel*, p. 293.

⁶⁴ Wellhausen, *Prolegomena to the History of Ancient Israel*, p. 161.

⁶⁵ Nathan Glazer recounts the story of Felix Adler (1851 - 1933), who had been sent by his father Rabbi Samuel Adler (1809 – 1891) from New York to Germany in order to receive both a rabbinic and secular education, so that he would succeed his father as rabbi. Returning to America after pursuing his studies, Felix felt that he could no longer accept Judaism as a valid religion in the modern world. He later wrote:

Was I to act a lie in order to teach the truth? There was especially one passage in the Sabbath Service which brought me to the point

of resolution: I mean the words spoken by the officiating minister as he holds up the Pentateuch scroll, 'And this is the law which Moses set before the people of Israel.' I had lately returned from abroad, where I had had a fairly thorough course in Biblical exegesis, and had become convinced that the Mosaic religion is, so to speak, a religious mosaic, and that there is hardly a single stone in it which can with certainty be traced to the authorship of Moses. Was I to repeat these words? It was impossible. It was certain that they would stick in my throat. On these grounds, the separation was decided on by me.

(From Nathan Glazer, *American Judaism* (Chicago: The University of Chicago Press, 1972), pp. 49 – 51).

⁶⁶ Although himself a champion of the source-critical approach, David Weiss Halivni left the Jewish Theological Seminary and broke with the Conservative Movement because he saw the halakhic reforms which the Conservative rabbinate had made, especially the acceptance of women's ordination, as an unacceptable breach of the oral tradition, one which "shakes the very foundation on which Jewish belief was based throughout the ages and inevitably weakens adherence to its precepts". (From David Weiss Halivni, *The Book and the Sword* (New York: Farrar, Straus and Giroux, 1996), p. 110).

⁶⁷ Abraham Joshua Heschel writes:

Indeed the surest way to forfeit *agada* (faith, inwardness) is to abolish *halakha*. Without *halakha*, *agada* loses its substance, its character, its source of inspiration, its security against becoming secularized. By inwardness alone we do not come close to G-d. The purest intentions, the finest of devotion, the noblest spiritual aspirations are fatuous when not realized in action."

(From Hayim Halevy Donin, *To Be a Jew* (New York: Basic Books, 1972), p. 31).

⁶⁸ Robert Gordis, "A Dynamic Halakhah: Principles and Procedures of Jewish Law," *JUDAISM* 28 (Summer 1979): 263 - 282.

⁶⁹ See articles in "Halakhah, Authority and the Future of Judaism", *JUDAISM* 29 (Winter 1980): 4 - 109.

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