

Right Answers Revisited: Monism and Pluralism in the Talmud

Richard Hidary

In an article that appeared in the previous volume of this journal, Christine Hayes compares Ronald Dworkin's notion of "one right answer" with the idea of truth in talmudic law.¹ She finds that the rabbis share Dworkin's theory of legal monism, according to which there exists only one correct answer in a given case, which rabbinic literature terms "*din*." However, unlike Dworkin, for whom legitimacy includes not only procedural validity and interpreting rules but also integrating principles of moral authenticity,² the rabbis, at least in some cases, distinguish between the "correct" procedural answer and the "best answer." The latter, which the Talmud terms "*lifnim mi-shurat ha-din*," conforms to moral principles of authenticity lacking in the "correct answer." While Hayes' conclusion that the rabbis sometimes distinguish between

1 Christine Hayes, "Legal Truth, Right Answers and Best Answers: Dworkin and the Rabbis," *Diné Israel* 25 (2008): 73-121.

2 Throughout this essay, I will follow the example of Hayes, *ibid.*, 77, and use the terms "legitimacy," "validity," and "authenticity" as defined by Bernard Jackson, "Secular Jurisprudence and the Philosophy of Jewish Law: A Commentary on Some Recent Literature," *The Jewish Law Annual* 6 (1987): 19:

I use the term *legitimacy* to mean the acceptability as law of norms and decisions in terms of the criteria of a particular legal system. I use the term *validity* to refer to production of a norm or decision in conformity with authorized *procedures* of decision-making and norm-creation of a particular legal system. Validity in this sense thus has no relation to the content of a decision or norm: in principle, a decision or norm of *any* content may be valid. I use the term *authenticity* to refer to conformity with a criterion of *content* required by a particular legal system.

Richard Hidary

various types of legal legitimacy is evidently correct,³ I disagree with her starting position that the rabbis, like Dworkin, were legal monists.

To clarify, the terms monism and pluralism can be used in at least three senses: practical, theoretical, and philosophical. Practical monism believes that every legal system must contain only one legitimate path for a judge or individual to follow in any given case, while practical pluralism finds that even within one jurisdiction there exist multiple overlapping paths of legitimate options from which one may choose.⁴ Theoretical monism claims that even on the level of interpretation and legislation, every legal system can produce a single best answer to any case. Even if that single correct answer may not always be found, in which case the “wrong” answer will be legislated and binding, that single correct answer still exists in theory. Theoretical pluralism, on the

- 3 One example of this discussed by Hayes is *b.‘Abod. Zar. 4b*, where God is said to be merciful at the time of judgment. One could perhaps understand this to mean that God foregoes his rights and forgives the transgression even before it is judged, in which case this text would not be a good example of two levels of justice but rather justice versus mercy. However, the text does situate God’s mercy during the period of judgment and states further that the word “*emet*” is not mentioned in the context of “*din*,” implying that “*din*” itself can include within it a measure of mercy. A judgment can therefore follow either strict justice or mercy and still be legitimate. A better example is *t.Sanh. 1:3*, which labels arbitration a “judgment of truth” that also leads to peace, as opposed to a judgment that follows the normal course of the legal system without arbitration or compromise. This text thus delineates two types of judgments that are both legitimate but that each fulfills different criteria. I do not agree, however, that these texts “employ truth language to connote the strictly and ‘theoretically’ correct answer” (Hayes, *ibid.*, 107). See further below, n. 25.
- 4 One prominent proponent of practical monism is Hans Kelsen, *Pure Theory of Law*, trans. Max Knight (Berkeley: University of California Press, 1967). The seminal study on practical legal pluralism is John Griffiths, “What is Legal Pluralism?” *Journal of Legal Pluralism* 24 (1986): 1-55. Practical monism and pluralism in the Talmud is the primary focus of my dissertation and its revision, Richard Hidary, *Dispute for the Sake of Heaven: Legal Pluralism in the Talmud*, Brown Judaic Studies (Providence: Brown University, forthcoming).

Right Answers Revisited

other hand, argues that many legitimate theoretical possibilities exist that equally fit the criteria of a given legal system, even if only one must be chosen in practice.⁵ In the philosophical sense, monism states that there exists on an ontological level only one correct law while pluralism means that multiple possibilities exist even metaphysically.⁶

Dworkin defines what he means by “right answers”: “Propositions of law are true if they figure in or follow from the principles of justice,

5 Owen Fiss, “Objectivity and Interpretation,” *Stanford Law Review* 34 (1982): 739-63, argues for theoretical monism, while Robert Cover, “Nomos and Narrative,” in *Narrative, Violence, and the Law: The Essays of Robert Cover*, ed. Martha Minow, et al. (Ann Arbor: The University of Michigan Press, 1995), 95-172, articulates the position of theoretical pluralism. Both of these writers seem to extend their theoretical monism/pluralism to practical monism/pluralism as well. However, one does not necessitate the other. One may believe that there are many theoretical possibilities but still think that law must settle on only one practical rule for the sake of uniformity. Alternatively, one may be convinced that there is only one theoretically correct law but find that it is not accessible and so many practical possibilities might be recognized as legitimate. See further discussion at Hiday, *Dispute for the Sake of Heaven*, Introduction.

6 Philosophical monism may be ascribed to classical natural law theorists who locate the source of natural law in Platonic ideas, the divine, or reason. Cicero, *De Re Publica* 3.22, for example, writes: “True law is right reason conformable to nature, universal, unchangeable, eternal.” Most other theories of law, such as legal positivism and realism, do not discuss the existence of law in metaphysical terms at all. Philosophical pluralism will be important in the discussion below regarding programmatic statements about pluralism in the Talmud, such as “These and these are the words of the living God” (see below, n. 15). On philosophical pluralism in the Talmud, see Norman Lamm and Aaron Kirschenbaum, “Freedom and Constraint in the Jewish Judicial Process,” *Cardozo Law Review* 1 (1979): 99-133.

While philosophical monism is likely to lead to theoretical monism and philosophical pluralism is likely to lead to theoretical pluralism, this is not logically necessary. One could be a philosophical pluralist but still posit that the circumstances and conditions of the legal system at any given time will produce a single correct law. Conversely, one may believe there is only a single metaphysically correct position, but still legitimate multiple options as normative possibilities, perhaps because the ontological truth is unattainable or, for some reason, undesirable.

Richard Hidary

fairness, and procedural due process that provide the best constructive interpretation of the community's legal practice."⁷ There exists only one answer that best fits these criteria. In our schema, Dworkin can best be labeled as a theoretical monist.⁸ In comparing talmudic thinking to that of Dworkin, Hayes' article deals primarily with monism and pluralism in the theoretical sense.

Hayes discusses three arguments made by contemporary writers in favor of the view that the rabbis were theoretical pluralists. Hayes disputes these arguments and concludes that "[d]espite some programmatic pronouncements that celebrate pluralism, talmudic texts that deal directly with norm-creation and adjudication are generally committed to the notion of a single 'correct' or right answer (legal monism)."⁹ In this article, I would like to revisit these three lines of reasoning, focusing on one of them in particular detail.

The first line of reasoning is from programmatic statements found in rabbinic literature, usually in aggadic contexts, concerning halakhic truth. These statements have been cited and analyzed so many times in recent scholarship¹⁰ that they have become, in the words of Steven Fraade, the "poster-children"¹¹ of talmudic pluralism. Prominent examples are:

7 Ronald Dworkin, *Law's Empire* (Cambridge, Mass.: Belknap Press, 1986), 225.

8 Dworkin admits that judges may not always be able to identify the best answer (*ibid.*, ix). Since the final law will not always conform to Dworkin's best answer, he cannot be neatly classified as a practical monist. That is, since a judgment is legitimate even if it not the absolute best answer, there must be more than one possible legitimate judgment. On the other hand, as Hayes, "Legal Truth," 76-77, points out, Dworkin is not a moral realist; therefore, his theory does not address philosophical pluralism. Even Hercules "has no vision into transcendental mysteries" (Dworkin, *Law's Empire*, 265). Rather, Dworkin speaks on the theoretical level when he contends that law is monistic.

9 Hayes, "Legal Truth," 87.

10 See Hidary, *Dispute for the Sake of Heaven*, Chart 0.2.

11 Steven Fraade, "Rabbinic Polysemy and Pluralism Revisited: Between Praxis and Thematization," *AJS Review* 31 (2007): 3.

Right Answers Revisited

“these and these are the words of the living God,”¹² “it [i.e., Torah] is not in heaven,”¹³ “a single verse expresses several meanings,”¹⁴ “all the words were given from one shepherd,”¹⁵ and “had the words of Torah been given as clear-cut decisions, it would not have a leg to stand on.”¹⁶ Hayes finds these statements to be inconclusive for several reasons. First, she asserts that they can be interpreted in different ways, although she only discusses the first two examples on this short list.¹⁷ I doubt, however, that one could interpret all such statements as reflecting monism, and certainly the sum total of them makes a strong case for pluralism.¹⁸ Second, Hayes argues that programmatic statements may not represent how the rabbis actually view the law when legislating and deciding cases. I fully agree that programmatic statements do not make a definitive case. These aggadot may reflect only an idealized view of the nature of the prophetic message¹⁹ or may be meant to assuage anxiety created by the tension between the belief in revelation and the

12 *y.Yebam.* 1:6 (3b); *b.ʿErub.* 13b and *b.Git.* 6b.

13 *y.Moʿed Qat.* 3:1 (81c-d) and *b.B. Meṣi’a* 59b.

14 *b.Sanh.* 34a.

15 *t.Sotah* 7:12 and *b.Ḥag* 3b.

16 *y.Sanh.* 4:2 (22a). Since many of these statements relate to pluralism at the stage of prophecy, they best fit into the category of philosophical pluralism, but their claims easily extend to theoretical pluralism as well. That is, if God has revealed multiple laws in a given case, then each of those options is presumably legitimate also at the theoretical level, even if a court decides on one in practice.

17 Hayes, “Legal Truth,” nn. 15 and 28.

18 See analyses of these texts in Daniel Boyarin, *Border Lines: The Partition of Judaeo-Christianity* (Philadelphia: University of Pennsylvania Press, 2004), 151-201, and Fraade, “Rabbinic Polysemy,” 1-40. While Boyarin argues that these texts reflect the view of the last layers of the Bavli, Fraade finds examples of pluralism and polysemy in tannaitic texts as well. These scholars disagree about the prevalence of these notions in each generation, but they agree that these texts do evince pluralism.

19 See Suzanne Last Stone, “Between Truth and Trust: The False Prophet as Self-Deceiver,” *The Harold Berman Memorial Lectures, Publication of the Center for Jewish Studies*, Queens College, CUNY (2005).

Richard Hidary

existence of dispute.²⁰ Certainly, one must also analyze halakhic texts that relate to pluralism in order get a full picture.²¹ Nevertheless, these statements do provide a context within which we can read halakhic texts. Knowing that the rabbis thought about the issue of pluralism and made broad claims for that position makes it at least plausible that they would apply it in halakhic matters as well.

The second line of reasoning cited by Hayes for pluralism is from David Kraemer's form-critical analysis of argumentation in the Bavli. He reviews halakhic texts that include extended deliberations.²² Kraemer makes the case that the Bavli's penchant for argumentation reflects its view of "truth" as a philosophical concept that attempts to understand "the world's universal categories."²³ Kraemer concludes that the Bavli editors' "willingness to engage in argumentation is evidence of their recognition that the answer to a given question or problem is not necessary or self-evident. To the contrary, if they are willing to debate the issue, they must agree that there are at least two possible answers or solutions."²⁴ Hayes counters that "not one of the texts cited by Kraemer employs truth language (Hebrew "emet" and the derivative forms) at all."²⁵

20 See Moshe Halbertal, *People of the Book: Canon, Meaning, and Authority* (Cambridge, Mass.: Harvard University Press, 1997), 52-72, for how the medieval commentators dealt with this issue.

21 This very argument is made by Hanina Ben-Menahem, "Is There Always One Uniquely Correct Answer to a Legal Question in the Talmud?" *The Jewish Law Annual* 6 (1987): 167-68, which is what prompts him to analyze the formula that is the subject of Hayes' critique, on which see further below. See also Hidary, *Dispute for the Sake of Heaven*, for my own contribution towards analyzing legal pluralism in halakhic texts.

22 Also relevant to this material is the thematization of dialectics in the Bavli, on which see Jeffrey Rubenstein, *The Culture of the Babylonian Talmud* (Baltimore, Md.: Johns Hopkins University Press, 2003), 39-53.

23 David Kraemer, *The Mind of the Talmud* (Oxford: Oxford University Press, 1990), 172.

24 *Ibid.*, 102. See also idem, "Rhetoric of Failed Refutation in the Bavli," *Shofar* 10 (1992): 73-85.

25 Hayes, "Legal Truth," 86, parenthesis in original. It is ironic that Hayes

Right Answers Revisited

Furthermore, Hayes argues that the Talmud “is a massive project of legal hermeneutics which is not fruitfully compared with philosophy, which in its primary classic formulation aims at a description of a uniform and eternal truth as distinct from the shifting conditions of human existence.”²⁶ However, these arguments are insufficient to divorce the

should criticize Kraemer for citing texts that do not use the word “*emet*” considering that Hayes herself (ibid., 89-116) shows that “*emet*” in talmudic literature generally does not relate to the truth value of a law but only to its procedural validity. Hayes finds only seven rabbinic texts that do “use truth language in a manner that points towards a correct answer” (ibid., 107 n. 63). However, the meaning even in these few contexts is questionable. As Hayes, ibid., 109, points out, “*emet*” in *Sifre Deut.* 17 (ed. Finkelstein, 28-29) refers to arbitration, which is surely not the correct judgment but only a compromise agreement. The use of the word in *t.Sanh.* 1:3 (= *b.Sanh.* 6b) is ambiguous. At first the Tosefta contrasts *mishpat emet*, “judgment of truth,” with “peace”; however, in the next sentence it again calls arbitration a “judgment of truth.” Even in the first sentence, “judgment of truth” need not mean the correct authentic law but rather the law that follows usual procedure rather than arbitration. *m. Abot* 1:18 and 6:6 are probably related to the above two contexts and are in any case too vague to prove anything. Hayes also cites *Sifre Num.* 134 where “*emet*” appears in a citation from *Mic.* 7:20. The context is Moses’ prayer that God should allow his attribute of mercy to overcome his attribute of justice. However, the citation from *Mic.* 7:20 seems to be just a continuation of 7:19, which calls upon God’s mercy (manuscript variants quote different parts of these verses, see ed. Horowitz, p. 180, and cf. *Midr. Leqah Tob Deut. Va-ethanan* (ed. Buber, 12), where the continuation of the verse is absent). Hayes’ interpretation of this midrash (ibid., p. 120 n. 87) is creative but reads in more than the text can bear. Finally, Hayes discusses *b. Abod. Zar.* 4b where “*emet*” is related to theoretical Torah study and the strict letter of the law as opposed to holding back from the full extent of the law, “*lifnim mi-shurat ha-din*,” to settle for a compromise position. Here, too, “*emet*” does not necessarily mean the correct answer but rather any judgment that accounts for the full measure of guilt. These texts are not concerned with theoretical truths and correct answers. Rather, they discuss the value of deviating from the normal legal procedures in favor of compromise for the sake of peace and mercy. The normal legal procedure does not have to result in one specific “correct” law but rather can include any judgment that decisively and uncompromisingly prosecutes the full extent of the law.

26 Ibid., 86 n. 27.

Richard Hidary

Talmud from all forms of pluralism. First, Kraemer does not claim to prove his point based on the language of the Talmud but rather on its form. Second, even if Hayes is correct in separating the concerns of the Bavli from philosophical truth, it is still possible, and I think likely, that the Bavli is concerned with legal truth at the theoretical level. Consider the following assessments of talmudic argumentation by David Halivni, David Kraemer, Jeffrey Rubenstein, and Daniel Boyarin, respectively:

The *Stammaim* were concerned almost exclusively with the “give and take,” the discursive (to the extent one wonders how they coped with practical halakhah that requires the formulation of fixed laws). They offered interpretation in depth for the opinions of the Shammaites, for instance, “משנת ב”ש אינה משנה” (whose teaching is not teaching [for practical purposes]),” as well as for the opinions of the Hillelites, whose views are generally followed. It is hard to ascertain from their discussions which view they wished to reject, since contrary views are equally justified. They must have drawn practical conclusions from their discussions, but no evident traces of them are left in the text. Page after page is filled with discursive material without any discernable trend to tell us what the final decision ought to be. Any decision, however, that is the result of honest discussion and an attempt to seek out the truth through discussion is acceptable. When there are conflicts, one must decide and select one point of view. The basis for the selection is a practical one: one simply cannot simultaneously follow contradictory views. But even the rejected view is not false; it is not less justifiable than the view that is being accepted.²⁷

The Bavli will more often content itself with a successful defense of all competing opinions than it will decide in favor of one or the other.²⁸

27 David Halivni, *Midrash, Mishnah, and Gemara: The Jewish Predilection for Justified Law* (Cambridge, Mass.: Harvard University Press, 1986), 76-77.

28 Kraemer, *Mind*, 105.

Right Answers Revisited

Bavli argumentation ... focuses on minority opinions, which have no bearing on practical law. Extended dialectical discussions probe different amoraic opinions, testing, hypothesizing, and investigating various possibilities, and then conclude much where they start, often failing to arrive at any resolution whatsoever.²⁹

The latest layer of Babylonian rabbinic literature, the finally redacted Talmud, not only rejected *homonoia* but promulgated instead a sensibility of the ultimate contingency of all truth claims, one that goes even beyond the skepticism of the Platonic Academy.³⁰

That the Bavli analyzes even rejected minority positions, delights in dialectics for its own sake, and does not come to conclusions, suggests that its composers were concerned with the theoretical side of law rather than “only with the halakhah as determined by majority rule.”³¹ Hayes harps on Kraemer’s definition of truth as “the way things really are,”³² thus setting up a dichotomy between the extremes of philosophical truth and practical legislation. Even if one rejects Kraemer’s formulation, however, the content of his argument still reveals a standpoint of theoretical pluralism in the Talmud.

Besides the extended deliberation in the Bavli, one could take cues from the dispute form prevalent in the Mishnah. The Mishnah’s form, as the first text of Jewish law to include multiple named opposing opinions, suggests a pluralistic attitude that all of these opinions are authentic parts of the canon. This point is made explicit at *m.‘Ed.* 1:5, which explains why the Mishnah includes minority opinions that have

29 Rubenstein, *Culture*, 3.

30 Boyarin, *Border Lines*, 153. Boyarin here, like Kraemer, speaks on the level of philosophical truth. Again, even if Hayes is correct that metaphysics is not the concern of the Talmud, I cite Boyarin to show only that the Talmud is concerned with more than just practical law.

31 Hayes, “Legal Truth,” 87 n. 28, and idem, “Book Review of Kraemer: ‘The Mind of the Talmud,’” *Journal of the Association of Graduates in Near Eastern Studies* 2 (1991): 46.

32 Idem, “Legal Truth,” 84, citing Kraemer, *Mind*, 171.

Richard Hidary

been rejected for halakhah. The majority opinion there states that a future court could agree with the minority opinion and overturn the current decision. According to this explanation, the minority opinion also has truth value. It has been rejected normatively in the present case, but is still true at the theoretical level. This reveals an attitude of theoretical pluralism.³³

The last line of reasoning is an explicitly pluralistic formula found in the Talmud and discussed by Hanina Ben-Menahem.³⁴ I will devote the rest of this article to a detailed and comprehensive analysis of this formula and the extent and nature of pluralism that it encodes. The complete Aramaic formula appears three times in the Bavli:

1. *b.Šabb.* 61a

אמר רב יוסף: השתא דתניא הכי, ואמר רבי יוחנן הכי, דעבד הכי – עבד,
ודעבד הכי – עבד.

Rav Yosef said, “Now that we have learned this and R. Yoḥanan has said that, one who acts this way has acted [legitimately] and one who acts that way has acted [legitimately].”

2. *b.Šebu.* 48b

אמר רב חמא: השתא דלא איתמר הלכתא לא כרב ושמואל ולא כרבי אלעזר,
האי דיינא דעבד כרב ושמואל – עבד, דעבד כרבי אלעזר – עבד.

Rav Ḥama said, “Since the halakhah has not been stated either like Rav and Shmuel or like R. Elazar, a judge who rules according to Rav and Shmuel has acted [legitimately], and one who rules according to R. Elazar has acted [legitimately].”

33 *m.‘Ed.* 1:6 records a minority view according to which the Mishnah records minority views generally in order to confirm for the future that they have been rejected. However, even according to this position, it is not clear if minority views are rejected even theoretically or only normatively. See further discussion of this text at Halbertal, *People of the Book*, 51-52, and Fraade, “Rabbinic Polysemy,” 19-21.

34 Ben-Menahem, “Is There Always One Uniquely Correct Answer,” 164-75.

Right Answers Revisited

3. *b.Ber.* 27a

השתא דלא אתמר הלכתא לא כמר ולא כמר, דעבד כמר – עבד, ודעבד כמר – עבד.

Since the halakhah has not been stated either like this master or like that master, one who acts according to this master has acted [legitimately] and one who acts according to that master has acted [legitimately].

The first text involves a ritual issue concerning the proper order in which to put on one's shoes. Regarding an unresolved contradiction on this issue between R. Yoḥanan and a baraita, Rav Yosef declares both views to be valid.³⁵ In the second text, Rav Ḥama uses the formula in connection with a monetary matter of collecting debts from an inheritance.³⁶ The choice here is given to the judge. The third text

35 The issue of which shoe to put on first does not seem to be a major halakhic issue or even a custom; nevertheless, the language of this sugya, “has acted [legitimately],” which assumes that one can don shoes in an illegitimate way, implies that this is not considered a trivial matter.

In the continuation of the sugya not cited here, Abaye seems to disagree with Rav Yosef's ruling by saying that either R. Yoḥanan did not know the baraita – in which case the halakhah should follow the baraita – or he did know it and nevertheless rejected it – in which case the halakhah should follow R. Yoḥanan. Either way, both opinions cannot be correct. Rav Naḥman bar Yitzḥak encourages one to be stringent and fulfill both opinions. Rav Ashi ends the sugya the way it began, seemingly agreeing with Rav Yosef that either practice is valid.

36 The general law of *m.Šebu.* 7:7 is that if one lends money to someone and both parties die, the lender's children may collect only after swearing that, to their knowledge, the loan had not yet been collected. In *b.Šebu.* 48a, Rav and Shmuel clarify that this only applies when the lender dies before the borrower, but should the borrower die first, the lender would already have been obligated to swear to the borrower's children that he had not been repaid, and that oath cannot be taken by the children because that information cannot be known to them. Since the lender's children cannot fulfill the obligation to swear, they do not get paid. R. Elazar disagrees and says the lender's children can swear to the best of their knowledge and that that is sufficient for them to collect even if the borrower dies first.

Richard Hidary

concerns a ritual issue of prayer times.³⁷ The anonymous redactor concludes that since the halakhah cannot be established either way, both are valid and one may choose which to follow. In all three instances, there is some disagreement about this solution within the sugya but the pluralistic solution is upheld by the final statement.

Ben-Menahem concludes from these examples that the Talmud does not always assume there is one uniquely correct answer to any given question. Hayes, however, denies Ben-Menahem's use of these examples as evidence of a pluralistic attitude. In her reading, these statements do not endorse two equally correct answers but rather only that "there are two candidates for the title of 'right answer' between whom we lack the means to choose."³⁸ That is, these statements endorse two opposing opinions not because they are both correct but rather because we have no means to determine which is correct and so we throw up our hands and accept the legitimacy of both even though one of them is wrong. Hayes posits that these formulae "declare that actions taken in accordance with either view are – *ex post facto* – allowed to stand without challenge."³⁹ She points to the tense of the verb עָבַד as indicating a past action: "A perfect verb indicates only that rulings already rendered will be respected with no reference to their correctness or desirability."⁴⁰ The fact

Because no explicit decision by subsequent amoraim is transmitted regarding which opinion to follow, Rav Ḥama grants a judge of such a case full autonomy to choose between these two equally viable, though contradictory, viewpoints. In the continuation of the sugya, Rav Papa, Rav Ḥama's colleague, agrees. An anonymous scholar attempts to challenge a judge who decides according to one view, but Rav Ḥama has the last word.

37 The Talmud endeavors to establish the halakhah regarding the latest time that one may recite the *minḥah* prayer. In the previous lines of this sugya, Rav Yitzḥak remains silent when asked about this issue, indicating that he could not decide and had received no tradition on the matter. Rav Ḥisda then attempts to bring a proof that is rejected by the anonymous redactor, who has the last word.

38 Hayes, "Legal Truth," 83-84.

39 *Ibid.*, 84.

40 *Ibid.*, 82.

Right Answers Revisited

that these statements only recognize the validity of a ruling after it has been given but do not endorse both views *ante factum*, argues Hayes, suggests that the rabbis adopt a monistic view. She therefore concludes that “the ‘*de-avad keX/haki avad*’ cases are not evidence for a pluralistic view of law in the Talmud.”⁴¹

I will now revisit Ben-Menahem’s analysis of this formula in order to show that it does indeed project a view of pluralism at both the practical and theoretical levels. Hayes’ grammatical argument for this phrase being *ex post facto* is problematic. One manuscript actually does read עביד, indicating a participle.⁴² But even for the rest of the versions that read עבר,⁴³ it is not accurate to treat this as a past tense verb. The perfect tense indicates an action that is completed, whether its completion occurs in the past, present, or future.⁴⁴ This sense may be more accurately rendered into English by the present tense, as Sokoloff translates: “the one who acts in this manner does so (properly) and the one who acts in that manner does so (properly).”⁴⁵ According to this understanding, the phrase can refer to an *ante factum* situation as well.

Furthermore, it is manifest that these formulae do apply *ante factum* based on their contexts. The first case cited above discussed which shoe one should put on first. Rav Yosef declares that one acts properly whether he has put on the right or the left shoe first. How can one understand this statement as being only *post factum*? What is one

41 Ibid., 84.

42 Ms. Oxford of *b.Ber.* 27a.

43 “עבר” also appears in a quotation of *b.Šebu.* 48b in ms. Sassoon of *Sefer Halakhot Pesuqot* (Jerusalem: Hevrat Mekize Nirdamim, 1951), 125. I thank Moshe Morgenstern for this reference.

44 See E. Kautzsch and A. E. Cowley, *Gesenius’ Hebrew Grammar* (Oxford: Clarendon Press, 1910), 309-13. The usage of the tenses in ancient Hebrew and Aramaic are similar.

45 Michael Sokoloff, *A Dictionary of Jewish Babylonian Aramaic of the Talmudic and Geonic Period* (Ramat-Gan: Bar Ilan University Press, 2002), 836. I thank Moshe Bernstein and Elitzur Avraham Bar-Asher for helping to clarify these grammatical points.

Richard Hidary

supposed to do *ante factum*? Does this statement require that one go barefoot because we cannot decide which shoe to put on first? Surely, the permission to allow either foot to go first must apply *ante factum*.

Similarly in the second case, a judge must either rule according to Rav and Shmuel who allow the orphans to swear and collect, or like the sages who do not. The judge cannot simply refuse the case because he cannot decide. This view is affirmed by the statement of Rav Papa, which immediately follows that of Rav Ḥama: “Rav Papa said, ‘We do not tear up a document of orphans, nor do we collect with it. We do not collect with it for perhaps we agree with Rav and Shmuel; we do not tear it up because a judge who rules according to R. Elazar has acted [legitimately].’” Rav Papa addresses the case *ante factum* and states that the loan contract should remain unpaid in the hands of the lender’s inheritors and await judgment. If one option were preferable over the other, then Rav Papa should have required that the contract either be destroyed or presented for payment immediately.⁴⁶ Thus, we can conclude that Rav Ḥama and Rav Papa deem both options legitimate even *ante factum*.⁴⁷

In the third case, the choice is not between two mutually exclusive options as it is in the previous examples. Rather, everyone agrees one can recite *minḥah* before *pelag*; the question is only whether one can still recite it afterwards. Therefore, one can be stringent not to pray either *minḥah* or *arvit* between *pelag* and sunset and thus act in agreement

46 See Ben-Menahem, “Is There Always One Uniquely Correct Answer,” 170-71.

47 Rambam, *Mishneh Torah, Hilkhoh Malveh ve-Loveh* 17:3, however, does think that Rav and Shmuel are to be preferred and that R. Elazar is only valid *ex post facto*. He derives this from Rav Naḥman’s statement earlier in the sugya that he would not repeal the position of Rav and Shmuel but would also not add to it, implying that he accepts its present application. Rav Ḥama, however, does not express any preference. Rav Papa’s language does seem to prefer Rav and Shmuel (“for perhaps we agree with Rav and Shmuel”) over R. Elazar (“a judge who rules according to R. Elazar has acted [legitimately]”), but this is not decisive.

Right Answers Revisited

with all opinions. In this case, one could assume an *ante factum* preference not to pray at all during this time and then state that *post factum* one has fulfilled his obligation if he did recite either prayer. However, such an *ante factum* preference is never stated and so this statement too is likely to be meant *ante factum*.

Once we confirm that this formula applies *ante factum*, we must conclude that the judge has discretion to choose either possibility. We can therefore uphold Ben-Menahem's argument that in these cases, the judge is granted "full autonomy to make a choice between conflicting and incompatible norms and that consequently in those instances no one uniquely correct answer exists."⁴⁸ Hayes argues that the formula assumes that "there is indeed a single right answer," but that it validates both options *post factum* only because it has recused itself from these cases in which "we have no means available to determine which view should prevail as the halakhah."⁴⁹ I agree that these cases describe situations of procedural breakdown where neither law has been established as the halakhah. However, this procedural breakdown relates only to the validity of each opinion, not to their authenticity.⁵⁰ The formula comes to say that although neither has been validated through the usual decision-making process, we will nevertheless consider both options as valid. The formula does not state that there is doubt regarding the truth value of each opinion at the theoretical level.

I propose that in a typical case where there is no procedural breakdown, the rabbis as legislators confront a range of authentic and theoretically correct possibilities. From among these possibilities, they choose one as the only legitimate law for practice. However, when, as in the cases discussed here, there is no clear choice, then the range of

48 Ben-Menahem, "Is There Always One Uniquely Correct Answer," 165. It is not clear if Ben-Menahem means to describe practical or theoretical pluralism here, but, as I will continue to argue, I think what he says is true on both levels.

49 Hayes, "Legal Truth," 84.

50 See the terminological definitions above, n. 2.

Richard Hidary

theoretical possibilities, all of which have truth value, remain available. I will now confirm this reading on the basis of a number of variations on this formula wherein a practical choice is made available even when there is no procedural breakdown or where procedural breakdown is resolved differently.

In addition to the three Aramaic statements cited above, there are two Hebrew parallels to the second half of this formula:

4. *b.B. Bat.* 124a-b

אמר רבה בר חנא אמר ר' חייא: עשה כדברי רבי – עשה, כדברי חכמים – עשה; מספקא ליה: אי הלכה כרבי מחבירו ולא מחביריו, או הלכה כרבי מחבירו ואפילו מחביריו.

Rabbah bar Ḥannah said in the name of R. Ḥiyya, “If one acts according to Rabbi he has acted [legitimately]; [If one acts] according to the sages he has acted [legitimately].” He was in doubt whether the halakhah follows Rabbi [when in dispute] with his colleague but not his colleagues or whether the halakhah follows Rabbi [when in dispute] with his colleague and even with his colleagues.

5. *b.Ber.* 11a

תני רב יחזקאל: עשה כדברי בית שמאי – עשה, כדברי בית הלל – עשה.

Rav Yeḥezkel learnt: If one acts in accordance with the opinion of Beit Shammai he has acted [legitimately]; if he acts in accordance with the opinion of Beit Hillel he has acted [legitimately].

These Hebrew tannaitic formulations are probably earlier than the amoraic Aramaic variations. The context of statement 4 is a baraita discussing a case where the value of an inheritance increases from the time of the father’s death to the time when the inheritance is divided. The anonymous opinion rules that the firstborn son is not entitled to a double share of the increased value but only of the original value, while Rabbi rules that the firstborn son does receive a double portion even of

Right Answers Revisited

the increase. For whatever reason,⁵¹ R. Ḥiyya does not decide between them but rather endorses both options. Since this is a monetary case, a judge must decide between the two opinions and neither is given preference. We can therefore assume that the statement refers to an *ante factum* situation. This is confirmed by contrasting it with a subsequent statement in the same sugya:

אמר רבא: אסור לעשות כדברי רבי, ואם עשה עשוי, קא סבר: מטינן איתמר.

Rava said, “One may not act according to Rabbi; but if he already did, then it was [legitimately] done.” He thought it [the rule about Rabbi and his colleague] was said to incline [towards the sages, but not to definitively reject Rabbi].

Rava says one must follow the sages *ante factum* but Rabbi’s opinion is also allowed to stand *post factum*. Note that Rava’s statement uses the passive participle (עשוי) in contrast with the perfect (עשה) used in R. Ḥiyya’s statement. Even more significantly, Rava’s statement clearly distinguishes between *ante* and *post factum* situations; R. Ḥiyya does not. The differences in verb tenses and sentence structures between Rava’s statement and the other five statements quoted, Hebrew and Aramaic, confirm that the latter address even *ante factum* situations.

In one sense, Rava’s pluralism, although only *post factum*, may actually represent a deeper form of pluralism than the others. The stammaitic gloss explains that Rava thinks that the rule concerning how to decide between Rabbi and his colleagues is not definitive but merely a suggestion to incline towards the opinion of the sages.⁵² In contrast,

51 The explanation given in the Aramaic part of statement 4, “מספקא ליה...”, is surely a redactional gloss. The rules for deciding between tannaitic opinions were first formulated by R. Yoḥanan and his students, so this explanation is somewhat anachronistic; see Richard Hidary, “Tolerance for Diversity of Halakhic Practice in the Talmuds” (PhD diss., New York University, 2008), 398f.

52 This understanding of the rules harks back to the three-way controversy about the nature of these rules recorded in *b. Erub.* 46b.

Richard Hidary

R. Ḥiyya thinks the rule is definitive and only tolerates both options here because he is unsure what the rule is. R. Ḥiyya's pluralism results from a breakdown in the legislative process due to doubt about a legislative principle. Rava's pluralism, although only *post factum*, is built into the legislative process.⁵³ The fact that Rava still validates Rabbi's view *post factum*, even though he has decided that the halakhah follows Rabbi's opponent, suggests that Rava is not a theoretical monist but rather accepts more than one opinion as true. If he thought that Rabbi's opinion had no theoretical truth value then he should not have allowed one of his rulings to stand.

In contrast to the previous four statements, statement 5 does not include a justification for pluralism based on legislative doubt. In the previous statements, pluralism is presented as an unfortunate result of a breakdown in the legislative process. In statement 5, on the other hand, the lack of any justification or apology suggests that this pluralism is perfectly acceptable.⁵⁴ No hint is given that one should ultimately triumph over the other; these are simply two valid options. In this sense, statement 5 is similar to that of Rava except that Rava allows only *post factum* pluralism while statement 5 permits it even *ante factum*.

Furthermore, statement 5 appears within the discussion of *m.Ber.* 1:3 regarding whether one must stand during the recitation of *shema* in the morning and lie down during its recitation at night – the opinion of Beit Shammai – or whether the position of recitation does not matter – the opinion of Beit Hillel. In this case, unlike the previous ones, it is possible to be stringent like Beit Shammai and fulfill all opinions. If only one view were correct but we were not sure which it was, then the ruling

53 In addition, R. Ḥiyya's pluralism can only apply to a limited number of cases that involve Rabbi versus the sages. On the other hand, if Rava fully adopts the position of R. Assi cited in *b. Erub.* 46b then his *post factum* acceptance of rejected views could apply to all decisions based on these rules.

54 Reading it in light of the other parallel formulae, one could, perhaps, assume a breakdown in the legislative process for deciding between the Houses as the basis for this statement as well. However, this statement is a baraita and predates its parallels.

Right Answers Revisited

should have been to lie down.⁵⁵ Since one is not forced to choose between the two positions, this permission to choose reflects legal pluralism at both the practical and theoretical levels. Both views are theoretically authentic possibilities and therefore both views may be legitimately practiced.

Moreover, this statement addresses not only the issue of reciting *shema* but rather all disputes between the Houses.⁵⁶ Rav Yehezkel's formulation also has a parallel in the Tosefta and the Yerushalmi where it clearly applies to all disputes between the Houses.⁵⁷ The Tosefta reads: "Choose either according to Beit Shammai with their leniencies and stringencies or according to Beit Hillel with their leniencies and stringencies." This statement explicitly permits *ante factum* choice between the two Houses and covers all cases, including those where a compromise or stringent position may be possible. This is therefore a significant expression of theoretical pluralism. *b. Erub. 7a* further extends this choice to controversy between any tannaim and amoraim.⁵⁸

We can gain added perspective on this formula by comparing it to four others that begin with the same phrase as the first three texts cited above but that have different endings. *b. Nid. 6a* (= *b. Erub. 46a*) reads:

תא שמע, מעשה ועשה רבי כרבי אליעזר. לאחר שנזכר אמר: כדי הוא רבי
אליעזר לסמוך עליו בשעת הדחק.
והוינן בה: מאי לאחר שנזכר? אילימא לאחר שנזכר דאין הלכה כרבי אליעזר
אלא כרבנן, בשעת הדחק היכי עביד כותיה?

55 *m. Ber. 1:3* quotes Beit Hillel's ruling, "One may recite in his usual manner." See also *b. Ber. 11a*. See, however, Amram Tropper, "Uvlekh tekha ba-de-rekh': Beit Hillel ke-darkan" (forthcoming), who explains based on Amram Gaon that Beit Hillel would allow one to remain in whatever position he was in before but not move into the position required by Beit Shammai.

56 See the continuation of this sugya and Moshe Benovitz, *Talmud ha-Iggud: BT Berakhot Chapter I* (Hebrew) (Jerusalem: The Society for the Interpretation of the Talmud, 2006), 509 and 513-14.

57 *t. Sukkah 2:3*, *t. Yebam. 1:13*, *t. Ed. 2:3*, and *y. Ber. 1:7* (3b-c). See further, *ibid.*, 512.

58 See Ben-Menahem, "Is There Always One Uniquely Correct Answer," 171.

Richard Hidary

אלא דלא איתמר הלכתא לא כמר ולא כמר, וכיון שנוכר דלאו יחיד פליג עליה אלא רבים פליגי עליה, אמר כדי הוא רבי אליעזר לסמוך עליו בשעת הדחק.

Come hear: It happened that Rabbi acted according to R. Eliezer. After he remembered he said, "R. Eliezer is worthy to be relied upon under extenuating circumstances."

We analyzed this: What does "after he remembered" mean? If it means after he remembered that the halakhah does not follow R. Eliezer but rather the sages, how does he act according to him [R. Eliezer] even under extenuating circumstances?

Rather, the halakhah had been stated neither according to this master nor according to that master. Once he remembered that it is not an individual who disputes with him [R. Eliezer] but rather many dispute with him, he said, "R. Eliezer is worthy to be relied upon under extenuating circumstances."

R. Eliezer rules leniently regarding a woman who does not menstruate for three months but then sees blood, and contends that we do not retroactively declare impure whatever she touched before but assume that this blood is the first occurrence; the rabbis disagree. Rabbi at first follows R. Eliezer but then changes to rule like his detractors while still permitting one to follow R. Eliezer when there is a pressing need. The anonymous redactor explains that at first Rabbi thought the halakhah was not established either way between the two rabbis and so he could choose either opinion, as per the formula seen in the previous cases.⁵⁹ Once he remembered that this case pitted the majority against R. Eliezer, he had to prefer the majority but he still upheld some level of legitimacy for R. Eliezer.⁶⁰ It is noteworthy that on the original

59 See further analysis at Louis Ginzberg, *A Commentary on the Palestinian Talmud*, 4 vols. (New York: Jewish Theological Seminary of America, 1941), 1:83-84.

60 This criterion is not consistent since two of the cases above also involve an individual opinion against the sages. Apparently, R. Yehudah (*b.Ber.* 27a)

Right Answers Revisited

assumption that the disagreement was between individuals, Rabbi did not simply act stringently to prohibit whatever she touched out of doubt; this again suggests that there is more than one correct answer to a question. Otherwise, why not just be stringent?

Here are three more variations on this formula:

אמר רב הונא בר תחליפא: השתא דלא איתמר הלכתא לא כמר ולא כמר, כל דאליס גבר.

Rav Huna bar Taḥlifa said, “Since the halakhah has not been stated either according to this master or according to that master, whoever is stronger prevails.”⁶¹

השתא דלא אתמר לא הכי ולא הכי, תפסה – לא מפקינן מינה, לא תפסה – לא יהבינן לה.

Since [the halakhah] has not been stated either this way or that way, if she is in possession of it [her *ketubbah*] then we do not take it from her but if she is not in possession of it then we do not give it to her.⁶²

השתא דלא איתמר הלכתא לא כהלל ולא כרבנן – מברך על אכילת מצה ואכיל, והדר מברך על אכילת מרור ואכיל, והדר אכיל מצה וחסא בהדי הדדי בלא ברכה זכר למקדש כהלל.

Since the halakhah has not been stated either according to Hillel or according to the sages, one recites a blessing “on eating *matsah*” and eats and then recites a blessing “on eating *maror*” and eats, and then eats *matsah* and *ḥasah* together without reciting a blessing in memory of what Hillel did [during the time of] the temple.⁶³

and R. Yoḥanan (*b. Šabb.* 61a) were considered of high enough stature to be able to balance the majority.

61 *b.Git.* 60b.

62 *b.Ketub.* 64a.

63 *b.Pesaḥ* 115a.

Richard Hidary

This first text states that since there is no set halakhah, there is no rule of law and the court dismisses the case, thus allowing the parties to settle matters outside of the law.⁶⁴ The second text similarly rules that since we cannot decide the halakhah, there is no legally rightful claimant to the property, which by default remains with whoever has it; we simply retain the status quo. These two solutions can work for monetary laws but not for ritual law. The third text states that when there is no clear decision, one should try to fulfill both views. This is also the strategy of Rav Naḥman bar Yitzḥak in *b.Šabb.* 61a who advocates fulfilling both opinions, a solution that is not always practicable. None of these three texts simply choose one view or endorse both views. All three can thus be seen to assume the monistic view that there is only one right answer, which, in these, cases cannot be accessed.⁶⁵

64 The phrase "כל דאלימ גבר" also occurs twice at *b.B. Bat.* 34b, one of them in the name of Rav Naḥman. See analysis of Samuel Atlas, *Pathways in Hebrew Law* (Hebrew) (New York: American Academy for Jewish Research, 1978), 76-82. This law is similar to Rav Naḥman's ruling, "עביר אינש דינא לנפשיה – one may take the law into his own hands" (*b.B. Qam.* 27b), on which see Emanuel Quint and Neil Hecht, *Jewish Jurisprudence: Its Sources and Modern Applications* (New York: Harwood Academic Publishers, 1986), 2:91f.

65 These cases of legal doubt are comparable to cases of circumstantial doubt. *y.Šabb.* 7:1 (9a) and *b.Šabb.* 69b discuss what happens if someone is lost or taken captive and does not know what day is Shabbat. Rav Naḥman bar Ya'aqov in the Yerushalmi says that he must rotate the day on which he observes Shabbat in order to observe Shabbat at least once every few weeks. Rava in the Bavli says he should only do the minimum amount of work necessary to stay alive every day of the week. Both sages believe that there is only one objective day of Shabbat and therefore prescribe being stringent to try and cover all bases. We thus see that when there is only one correct law that is not known the rabbis tend to impose stringencies that maximize chances of fulfillment. It therefore stands to reason that when the rabbis permit one to choose between possibilities, even where they could be stringent, they do not think there is only one correct answer. In the case of Shabbat, Rav and Shmuel seem to think that there is a subjective element in the day of Shabbat and therefore allow one to begin counting the week from the day he remembers. They do not permit

Right Answers Revisited

These are all alternatives to the either-or solution provided by the texts quoted above. *b.Šebu.* 48b is a monetary case in which the Talmud could have said, “Whoever is stronger prevails,” or “If he is in possession of it then we do not remove it but if he is not in possession of it then we do not give it to him.” In *b.Šabb.* 61a, one view actually does suggest that one should fulfill both opinions; but the other amoraim in that sugya do not agree. One could similarly legislate that one should not recite *minḥah* in the late afternoon in order to be stringent, a road not taken by *b.Ber.* 27a. The fact that the Talmud in those three cases decides to leave it up to the judge or the individual to decide which opinion to follow even where alternative solutions are possible does not fit well with a monistic view, but rather suggests a pluralistic attitude at the theoretical level. If a rabbi chooses to endorse two opposing positions rather than rule stringently, attempt to fulfill both, or excuse himself completely by leaving the status quo or putting the case back into the hands of the litigants, then such a rabbi ascribes some level of authenticity to both positions.

Based on this analysis, I conclude that the above quoted either-or formulae (statements 1-5) surely permit *ante factum* pluralism of practice. These statements do not explicitly address the issue of multiple truths and their authors may not have been consciously expressing any opinion on that subject. However, we can attempt to derive from their statements what might have been their unstated and perhaps even subconscious assumptions. Statements that offer the either-or option only when no legislative solution is possible could be understood as reflecting a theoretically monistic view. However, if other less pluralistic options are available, and yet the either-or option is still endorsed, then we can detect a non-monistic outlook even in these statements. Statements that offer the either-or option even when not

one to randomly choose one day of the week, in which case we could have interpreted their opinion as another way of dealing with doubt about an objective truth. Rather, they require that one re-create the subjective experience of counting the days of creation.

Richard Hidary

presented with a legislative breakdown reflect an even higher degree of comfort with the possibility of multiple truths. Significantly, all of the Bavli sugyot that include the either-or formula conclude the sugya with a pluralistic ruling, even when more monistic strategies are proposed beforehand.⁶⁶

The Bavli's either-or formula also has instructive parallels in the Yerushalmi. *y. Erub.* 1:4 (19a) states:

רב הונא בשם רב הלכה כרבי מאיר.
שמואל אמר הלכה כרבי יודה.
רבי יהושע בן לוי אמר הלכה כרבי שמעון.
אמר רבי שמעון בר כרסנא מכיון דתימר הלכה כהדין והלכה כהדין מאן
דעבד הכין לא חשש ומאן דעבד הכין לא חשש.
א"ר מנא מכיון דאיתמר הלכה כרבנן שבקין ליחיד ועבדין כרבנן.

Rav Huna in the name of Rav [says]: The halakhah follows R. Meir.

Shmuel says: The halakhah follows R. Yehudah.

R. Yehoshua ben Levi says: The halakhah follows R. Shimon.

R. Shimon bar Carsena says: Since you say the halakhah follows them and the halakhah follows them, one who practices this way need not worry and one who practices that way need not worry.

66 *b. Šebu.* 48b and *b. Ber.* 27a end with the complete pluralistic formula, *b. Šabb.* 61a ends with Rav Kahana, who followed the pluralistic formula, and *b. B. Bat.* 124a and *b. Nid.* 6a end with limited pluralism (only valid after the fact or in extenuating circumstances). If we assume that the last cited opinion in a sugya represents its conclusion then we may assert that all the Bavli sugyot prefer a pluralistic option. However, at least two of these sugyot (*b. B. Bat.* 124a and *b. Šabb.* 61a) seem to simply list the opinions in chronological order without necessarily preferring the last cited opinion; these two sugyot include about the same number of monistic opinions as pluralistic ones. All opinions cited in *b. Šebu.* 48b are pluralistic, except for an anonymous sage who is rejected. Most significant are *b. Ber.* 27a and *b. Nid.* 6a, in which the anonymous redactorial voice leads the discussion to a pluralistic conclusion (though limited in *b. Nid.* 6a).

Right Answers Revisited

R. Manna says: Since it is said, “the halakhah follows the sages” [i.e., R. Meir whose view is stated anonymously in *m. Erub. 1:4*], we leave the opinion of the individual and we practice according to the sages.

There are three tannaitic views regarding the size of the crossbeam used for an *eruv*. Three early amoraim each establish the halakhah according to a different tanna. R. Shimon bar Carsena, a fourth-fifth generation Palestinian amora, concludes that all options are therefore valid and so one may follow whichever opinion he prefers. In this case, one could be stringent to satisfy all opinions so the pluralistic option is especially significant. Unlike the Bavli formulations, where the problem was that “the halakhah has *not* been stated either like this master or like that master,”⁶⁷ the Yerushalmi confronts a situation where all opinions have already been approved as normative. This leads to a legislative breakdown of a slightly different nature than that in the Bavli statements. Presumably, these three rulings are mutually exclusive, leaving us with a conundrum that all possibilities are both valid *and* invalid. R. Shimon bar Carsena therefore reassures us that since all views are procedurally valid according to somebody, one need not worry that one ruling invalidates the other ruling. Here too, as in the Bavli formula, the problem is not that we cannot decide which view is correct at the theoretical level. All three possibilities are authentic. Rather, we lack clarity as to which view has been accepted as normative on the practical level.

The second half of R. Shimon bar Carsena’s formulation is used in *y. Yoma 5:5* (42d):

שני כהנים ברחו בפולמוסיות אחד אומר עומד הייתי ומחטא ואחד אומר
מהלך הייתי ומחטא.
אמר רבי יודן הדא אמרה מאן דעבד הכין לא חשש ומאן דעבד הכין לא חשש.

⁶⁷ This is true of statements 2 and 3 cited above. Statement 1 is actually more similar to the Yerushalmi’s scenario.

Richard Hidary

Two priests ran away during the wars. One of them said, "I used to stand and sprinkle." The other said, "I used to walk and sprinkle."

Rav Yudan said, "About this it is said: One who acts this way need not worry and one who acts that way need not worry."

m.Yoma 5:5 records a dispute between the anonymous opinion and R. Eliezer about whether the high priest walks around the altar while sprinkling each corner or whether he stands in one place while sprinkling. Two priests report that they each practiced differently. Rav Yudan concludes that both methods are valid. Again, this formula appears in a situation in which both options were already practiced legitimately and affirms that, indeed, both can be considered valid. *y.Git.* 3:1 (44d) expresses a similar point of view to that of R. Shimon bar Carsena, though without using his formulation:

אתא עובדא קומי רבי ירמיה ועבד כריש לקיש אמר ליה רבי יוסי שבקין רבי יוחנן ועבדין כריש לקיש אמר ליה הוריותיה דרבי יוחנן הורייה והורייתא דריש לקיש לאו הורייה?

A case came before R. Yirmiah who acted according to Resh Laqish. R. Yose said, "Do you ignore R. Yoḥanan and act according to Resh Laqish?" He responded, "Is the teaching of R. Yoḥanan a [legitimate] teaching and the teaching of Resh Laqish not a [legitimate] teaching?"

This example of the formula appears within a conversation between two amoraim. R. Yirmiah decides a case according to Resh Laqish and is castigated by R. Yose, who assumes that the halakhah must follow R. Yoḥanan. R. Yirmiah responds with a powerful retort that both opinions are legitimate and so one can decide either way.

Another Yerushalmi sugya quotes a similar conversation:

והוה רבי זעורה מסתכל ביה א"ל מה את מסתכל בי מה ידעת ולא נדע תבין ולא עמנו הוא?

Right Answers Revisited

R. Ze'orah was staring at him. He said, "What are you looking at? What do you know that we do not know? [What do you] understand that is not [understood] by us?"⁶⁸

R. Ba in the name of Rav Yehudah offers a radical interpretation of a law. R. Ze'orah responds with a critical stare. R. Ba retorts that there is more than one way to think about the issue. This comment implies a pluralistic attitude not only on the practical level but also at the theoretical level. Paradoxically, the existence of such cases of indeterminacy implies that the vast majority of cases are determinate. These cases, in which "the halakhah has not been stated either way," are presented as exceptional and reveal a general assumption that most disputes have been conclusively decided. However, it is precisely when the usual process of decision-making breaks down that we can catch a glimpse of its inner workings and underlying assumptions. The fact that the rabbis sometimes permit multiple normative options, even in cases when they could have simply chosen the stringent view, suggests that at least some of them ascribed authenticity to all of the options. Combining this evidence with the Talmud's programmatic statements regarding pluralism and its argumentative form, we can conclude that many rabbis believed that in some cases there does exist more than one right answer.

68 *y.Meg.* 4:1 (75a). The end of the sentence quotes Job 15:9.