

David C. Flatto, a professor of Jewish studies and constitutional law at Penn State University, recently received his doctorate with distinction from Harvard University's department of Near Eastern Languages and Civilizations.

TRADITION AND MODERNITY IN THE HOUSE OF STUDY: RECONSIDERING THE RELATIONSHIP BETWEEN THE CONCEPTUAL AND CRITICAL METHODS OF STUDYING TALMUD

My first exposure to the academic study of Talmud (referred to herein interchangeably as the “academic method,” the “critical method,” or the “modern method”)¹ came after completing nearly a decade of learning at Yeshiva University and *yeshivot besder*, when I audited several seminar sessions led by Professor David Weiss Halivni at Columbia University. Prior to the start of the semester, I met Professor Halivni who informed me that he would be teaching the second chapter of *Bava Batra*. Anticipating the opening “*shiur*,” I asked him whether he will be focusing on the *sugya* of *gerama be-nezikin* (indirect damages), which is one of the few “*lomdushe*” subjects in that chapter.² My enthusiasm for this topic hardly registered with him, and he said that we would be proceeding sequentially, and intimated that there was not much in particular about that topic which would occupy his attention. I remember my sense of surprise and disappointment at his response, and my certainty that I was not in the right venue.

¹ Throughout this article I refer to the critical method and traditional method in uniform terms, and disregard the significant diversity of approaches within each school. Nevertheless, for purposes of this article I believe that this simplification is justified. I am assuming that the reader has much familiarity with the traditional method, and will elaborate below on aspects of the critical method. See also notes 35, 38 and 44. I would like to thank the 2010 Orthodox Forum coordinators and participants, and numerous other colleagues and friends for their many thoughtful responses to earlier drafts of this article.

² See *b. Bava Batra* 22b-23a. Traditional *yeshivot* focus primarily on the first, third and eighth chapters of *Bava Batra* in their course of study.

TRADITION

My strong reaction can be traced to my years of learning at Yeshiva University, whose hallmark mode of study is the traditional analytic method, especially the Brisker method (referred to herein interchangeably as the “traditional method,” the “conceptual method,” the “analytical method,” or the “Brisker method”). Developed in the illustrious *yeshivot* of Eastern Europe, especially Lithuania, in the nineteenth century, this methodology dominates yeshiva study to this day, including traditional and Modern Orthodox yeshivot.³ Schooled in the Brisker method, with its preference for conceptually intricate *sugyot*, I found the distinct emphases of the critical method to be alien and misguided.

Considered from a distance, Yeshiva University’s choice (I will focus on Yeshiva University as an exemplar of Modern Orthodox *yeshivot*) of the traditional method—although well known to all who have passed through its corridors—is not entirely obvious. Marching under the banner of “*Torah U’Madda*,” Yeshiva University ideally promotes the highest forms of religious and secular study. At first blush, forging a synergy between these disciplines by applying secular academic tools to Jewish knowledge, in the manner of the critical method, would seem to afford an ideal mode of study. Moreover, one would imagine that the origin and prevalence of the traditional method in pre-modern *yeshivot* would suggest that it is tailored to a world that does not embrace components of modernity which are at the forefront of the vision of Yeshiva University.⁴ Just as *Parsha* or Tanakh are often studied

³ For a more precise account, see Mordechai Breuer, *Ohole Torah: ha-Yeshivah, Tavnitah ve-Toldoteha* (Merkaz Zalman Shazar le-Toldot Yisrael: Jerusalem, 2003); and Shaul Stampfer, *Ha-Yeshivah ha-Litait be-Hithavutah ha-Meah ha-Tesha-esreh* (Merkaz Zalman Shazar le-Toldot Yisrael: Jerusalem, 1995). On the conceptual method, see Chaim Saiman, “Legal theology: The Turn to Conceptualism in Nineteenth-Century Jewish Law,” *Journal of Law and Religion* 21:1 (2005-2006), pp. 39-100; *Lomdut, The Conceptual Approach to Jewish Learning*, ed. Yosef Blau (Ktav Publishing House: Jersey City, 2005); R. Aharon Lichtenstein, “The Conceptual Approach to Torah Learning: The Method and Its Prospects,” *Leaves of Faith: The World of Jewish Learning* (Ktav Publishing House: Jersey City, 2003); Marc Shapiro, “The Brisker Method Reconsidered,” *Tradition* 31:3 (1997), pp. 78-102; and Norman Solomon, *The Analytic Movement: Hayyim Soloveitchik and His Circle* (Scholars Press: Atlanta, 1993). For a discussion of the relationship of the Talmudic rabbis to conceptualization, see Leib Moscovitz, *Talmudic Reasoning: From Casuistics to Conceptualization* (Mohr Siebeck: Tubingen, 2002).

⁴ In addition, the critical method’s objective of arriving at an exact understanding of a rabbinic teaching arguably shares more with the monistic approach of the *Rishonim* (at least in certain respects), than the binary analytic inquiry of the Brisker method, which was deemed by early contemporary critics to be too artificial and innovative. Of course, this is ironic given that today this latter approach has become the prevalent “traditional” method of study in *yeshivot*. Moreover, the innovative dimension

in more “modern” ways at Yeshiva University (and other Modern Orthodox *yeshivot*),⁵ so too one would imagine that its approach to gemara would reflect modern sensibilities.⁶ Nevertheless, although Yeshiva University encourages academic inquiry in its secular disciplines and endorses aspects of modernity, it resists academic studies within its *bet midrash*, deliberately assigning them to other divisions (such as the Bernard Revel Graduate School and Yeshiva College).⁷ Further, the specific branch of Jewish studies focusing on the academic study of the Talmud is hardly pursued at Yeshiva University altogether.⁸

of the Brisker method (despite often being characterized as a bridge to the past) constitutes another reason to question whether it should be privileged over other novel approaches. To be sure, if the Brisker method has an innovative side, this partially undermines my argument earlier in the paragraph. Nevertheless, the new dimension of the Brisker method differs from the “modern” dimension of the critical method, which culls from critical-historical techniques which were developed in the modern era.

Needless to say, notwithstanding the charge of innovation, the traditional roots of the Brisker method have been staunchly defended by its leading practitioners, and in any event, by now the Brisker method has been received in the yeshiva world as the traditional method of study. For more on the Brisker method and its origins, see the references cited in the previous note. See also R. Joseph B. Soleveitchik, *Halakhic Man*, tr. Lawrence Kaplan (Jewish Publication Society of America: Philadelphia, 1983); and “*Ma Dodekh mi-Dod*,” *Ha-Doar* (1963).

⁵ See, e.g., the various writings of Rabbis Mordechai Breuer, Yoel Bin-Nun and Elchanan Samet, and studies found in journals such as *Megadim*. See also *Modern Scholarship in the Study of Torah: Contributions and Limitations*, ed. Shalom Carmy (Aronson Press: Northvale, New Jersey, 1996).

⁶ To be sure, certain leading Modern Orthodox voices have underscored the relevance, and even modern dimensions, of traditional study in the contemporary era. Thus, R. Soloveitchik’s *Halakhic Man* can be seen as a modern defense of traditional study (and practice). In addition, see R. Lichtenstein’s subtle analysis of the role of modern language in formulating traditional analytic concepts in his introduction to *Shiurei ha-Rav Aharon Lichtenstein: Dina De-Garme*, eds. Amihai Gordon and David Feldman (Yeshivat Har Etsiyon: Alon Shevut, 2000). See also several essays in *Lomdut, The Conceptual Approach*, ed. Yosef Blau. For additional reflections on this matter, as well as a post-modern perspective on Talmud study, see the various writings of R. Shagar (Shimon Gershon Rosenberg), especially *Kelim Shevurim: Torah ve-Tziyonut-Datit bi-Sevivah Post-Modernit: Derashot le-Moade Zemanenu* (Yeshivat Siah Yitshak, Jerusalem, 2003).

⁷ For additional background on the history of this distribution, see Aaron Rakeffet-Rothkoff, *Bernard Revel: Builder of American Jewish Orthodoxy* (Jewish Publication Society of America: Philadelphia, 1972), pp. 43-134, 198-203. See also the secondary references cited in note 11 below.

⁸ For an important early statement of principle related to this matter, see Dr. Bernard Revel’s revealing (unpublished) essay entitled “Seminary and Yeshiva.” Authored by Revel in 1928 in objection to the proposed merger between Yeshiva University and the Jewish Theological Seminary, this essay underscores the different approaches

TRADITION

Trying to imagine what a different kind of Modern Orthodox yeshiva would look like is not just a theoretical enterprise, since the dawn of Modern Orthodoxy in the late nineteenth and early twentieth centuries produced precisely such an institution in the Berlin Rabbinical Seminary (*Rabbiner Seminar für das Orthodoxe Judenthum*). This trailblazing yeshiva incorporated nascent academic tools in all aspects of its religious studies, including the teaching of Talmud. Its *roshei yeshiva* authored pioneering studies on the schools of Midrash Halakha, the development of the Mishna, the era of the Geonim, and the structure of the Talmud.⁹

Although the world of Berlin Orthodoxy has long since tragically faded, many of its primary values spread to the emerging center of Modern Orthodoxy across the Atlantic.¹⁰ Accordingly, one would presume that the great religious and educational experiment of the Berlin Rabbinical Seminary served as an inspiration for the ideological architects of Yeshiva University.¹¹ Nevertheless, when one enters the *bet midrash* of

of these two institutions. It is transcribed in Rakeffet-Rothkoff, *Bernard Revel*, pp. 268-275.

To be sure, my sweeping characterization of the minimal role of academic Talmud study at Yeshiva University has some discrete and notable exceptions (see, e.g., my reference to the research of Prof. Avraham Weiss below), but as a generalization it holds true.

⁹ On the Berlin Rabbiner Seminar, see the various secondary references cited by Marc Shapiro, *Between the Yeshiva World and Modern Orthodoxy: The Life and Works of Rabbi Yehiel Yaakov R. Weinberg* (Littman Library: London, 1999), p.76, n.1. On the circumstances surrounding its closing, see Christhard Hoffmann and Daniel Schwartz, “Early but Opposed - Supported but Late: Two Berlin Seminaries and Attempted to Move Abroad,” *Leo Baeck Institute Year Book* 36 (1991), pp. 267-304.

¹⁰ These values continue to have importance over a century later. Likewise, various social and religious challenges faced by the Modern Orthodox community in Berlin over a century ago persist, or have resurfaced, in Modern Orthodox communities in the twenty-first century. Anecdotally, in preparing for my graduate school comprehensive exams several years ago, I had to read much secondary material which analyzed historic societies which were mostly alien to me. Yet, one book on my reading list conjured up a world that was uncannily familiar—Mordechai Breuer’s important study of German Orthodoxy in the late nineteenth and early twentieth century, *Modernity within Tradition: The Social History of Orthodox Jewry in Imperial Germany*, tr. Elizabeth Petuchowski (Columbia University Press: New York, 1992). As this fact became increasingly apparent to me, I rapidly digested his study less as a student of the past and more as a concerned, or at least invested, member of my present community, hoping to gain insights about our present predicament.

¹¹ In a sense, Yeshiva University embraces a more comprehensive modern ideology than the Berlin Rabbiner Seminar. For example, many Yeshiva University students study art and film and a host of secular subjects; play collegiate sports and participate in performance arts and various other extra-curricular activities; and in numerous respects live openly modern lifestyles. While this characterization applies primarily to the college and university, and not the Rabbi Isaac Elchanan Theological Seminary

Yeshiva University, one has abandoned Berlin for the provinces of Lithuania. The dominance of “Litvishe” learning, and especially the legacy of Volozhin and Brisk, pervades all sectors of these hallowed halls of study. Yeshiva University deliberately secures a traditional mode of study which resists modern influences. Its *bet midrash* has been carefully constructed to hermetically seal off the methodological influences of the wider academy, and preserve the mode of study of traditional *yeshivot* of the past. The stakes and implications of this choice are evident, and continue to color the nature of Yeshiva University ever since.

Various reasons account for this choice, but perhaps the most basic one is the allure of traditional study. While the critical method of Berlin was often dry, technical and of the black letter variety, a rich and dazzling world of conceptual sophistication and piercing analytical clarity was being developed in the preeminent Eastern European yeshiva of Volozhin, and perpetuated by its progeny. Indeed, one of the crowning achievements of Yeshiva University is the quality of learning which has flourished there since its establishment, generated by the intensive mode of traditional study that transpires daily in its *bet midrash*. As a product of this *bet midrash*, I aspired to participate in this often exhilarating discourse. It was undoubtedly this deeply felt sentiment that triggered my visceral response during my conversation at Columbia University.

Looking back at my encounter with Professor Halivni a decade later I understand my immediate reaction, but also have gained an additional perspective, largely due to my greater appreciation of the critical method (especially when understood in a more capacious sense, as I delineate below), which has also evolved much since its initial stages in Berlin. Professor Halivni (alongside other leading scholars) has developed a critical methodology over many years which he applies seriatim to the redacted text of the Talmud.¹² His aim is to deconstruct the layers of the Talmud

and *bet midrash*, there is a porous boundary separating these institutions (especially because many students are enrolled in several of them simultaneously).

For more on the history of Yeshiva University, RIETS, the *bet midrash*, and its Eastern European influences, see *My Yeshiva College: 75 Years of Memories*, eds. Menachem Butler and Zev Nagel (Yashar Books: New York, 2006); Jonathan Sarna, *American Judaism: A History* (Yale University Press: New Haven, 2004), pp. 192-193, 231-233; Victor Geller, *Orthodoxy Awakens: The Belkin Era and Yeshiva University* (Urim Publications: Jerusalem and New York, 2003); Jeffrey Gurock, *The Men and Women of Yeshiva: Higher Education, Orthodoxy, and American Judaism* (Columbia University Press: New York, 1988); Rakeffet-Rothkoff, *Bernard Revel*; and Gilbert Klaperman, *The Story of Yeshiva University, the First Jewish University in America* (Macmillan: New York, 1969).

¹² The style of learning Yeshiva Talmud sequentially is also prevalent in certain traditional *yeshivot*, including Yeshiva University, and traces all the way back to Volozhin.

TRADITION

and retrieve the original form and meaning of each respective layer. The specific content of a given passage is of lesser interest to him. In contrast, the traditional method privileges the conceptually intricate *sugyot*, which demand and reward the often strenuous mental exertion that is required to plumb the depths of their teachings. Standing where I am today, such *sugyot* still captivate my attention, but I now recognize that the various tools of critical scholars—including source-critical, as well as literary and historical tools—supply a powerful arsenal to use in engaging this very same conceptually rich material.¹³

Confronted with two methods which in my estimation have much cogency and validity, it is necessary to consider their interrelationship and their mutual viability. This issue has been addressed in various publications in recent years, including an Orthodox Forum volume entitled *Modern Scholarship in the Study of Torah*.¹⁴ When I revisited these learned articles I gained much, but ultimately found myself unsatisfied (see more below). One of these papers describes the traditional mode of study as the “Camino Real (the royal road),” a designation that as a proud graduate

Nevertheless, traditional yeshivot undoubtedly dedicate the lion’s share of attention to the “meatier” *sugyot*.

¹³ For more on these tools, see below.

The contrary position which insists on adopting the singular focus of the traditional mode of study instead of other critical alternatives deserves—in the spirit of both modernity and Lithuanian debate—to be challenged, and needs to be justified.

¹⁴ See Shalom Carmy, “Camino Real and Modern Talmud Study,” *Modern Scholarship*, pp. 189-196; Daniel Sperber, “On the Legitimacy, or Indeed, Necessity, of Scientific Disciplines for True ‘Learning’ of the Talmud,” *Modern Scholarship*, pp. 197-226; and Yaakov Elman, “Progressive *Derash* and Retrospective *Peshat*: Nonhalakhic Considerations in Talmud Torah,” *Modern Scholarship*, pp. 227-288. See also Richard Hidary, “*Hilkhakh Nimrinhu le-Tarvaihu*,” *Kol Hamevaser* 3:3 (December 2009), pp. 8-9; Moshe Simon-Shoshan, “Between Philology and Foucault: New Syntheses in Contemporary Mishnah Studies,” *AJS Review* 32: 2 (2008), pp. 251-262; David Bigman, “Finding a Home for Critical Talmud Study,” *The Edah Journal* 2:1 (2002); Yehuda Shwarz, “*Hora’at Torah she-be-Al Peh: Hora’at Mishnah ve-Talmud ba-Hinnukh ha-Yisraeli ba-Aspaklaryah shel Tokhniyot ha-Limmudim ve-ha-Sifrut ha-Didaktit*,” (Ph.D. Dissertation, Hebrew University, 2002); Hayyim Navon, “*Ha-Limmud ha-Yeshivati u-Mehkar ha-Talmud ha-Akademi*,” *Akdamot* 8 (2000), pp.125-143; Pinchas Hayman, “Implications of Academic Approaches to the Study of the Babylonian Talmud for Student Beliefs and Religious Attitudes,” *Abiding Challenges: Research Perspectives on Jewish Education; Studies in Memory of Mordechai Bar-Lev*, eds. Yisrael Rich and Michael Rosenak (Bar-Ilan University: Ramat-Gan, 1999), pp. 375-399; Menachem Kahana, “*Mehkar ha-Talmud be-Universitah ve-ha-Limmud ha-Masorati ba-Yeshivah*,” *Be-Hevlei Masoret u-Temurah*, ed. Menachem Kahana (*Kivvunim*: Rehovot, 1990), pp. 113-142; and various articles in *Why Study Talmud in the Twenty-First Century?: The Relevance of the Ancient Jewish Text to Our World*, ed. Paul Socken (Rowman and Littlefield: New York, 2009).

of the Yeshiva University *bet midrash* I share much sympathy with, but nevertheless am unwilling to accept as a given or a point of departure.¹⁵ I am wary to characterize any one approach as the leading one, other than to acknowledge that descriptively this characterizes the most popular approach in (even Modern Orthodox) *yeshivot* today. At the same time, the profound legacy and capacity of the traditional approach, which greatly enriches all analyses, cannot be gainsaid. Any academic rejection of the conceptual method seems to me tendentious and highly constraining.

In juxtaposing these two methods, I think it is crucial to accent their dialectic relationship. At times, the alternative approaches of academic and traditional study are mutually fructifying, and Talmud study can be greatly enhanced by employing a broader range of tools. At other times, however, they represent fundamentally different, even opposite, orientations toward learning Talmud (and beyond), and here navigating between them is much more complex. Below I will first elaborate upon the benefits of expanding the mode of study beyond the traditional method. Given these gains, I feel strongly that an avenue has to be carved out for promoting the greater pursuit of academic study even in the *bet midrash*. Afterwards, I will return to the tensions which inhere between these ultimately diverse approaches to learning Talmud. Here my conclusions are more tentative or provisional.

Allow me to illustrate by way of example what I mean by the modern study of the Talmud in comparison to the traditional mode of learning. I will deliberately choose an illustration that emerges from my personal course of study: After learning *Masekhet Sanhedrin* in yeshiva, I have returned to study this tractate with heightened critical sensibilities. Certain very basic analytical issues have surfaced in this recent iteration which I briefly encountered in my previous round of learning, but have assumed an entirely different magnitude of significance in light of a critical framework; others are altogether new and also of much consequence.

The opening *mishnayot* of *Sanhedrin* map out the design of the court system. Comprised of three tiers of courts (*batei dinim*) of three, twenty-three, and (seventy or) seventy-one judges, these passages delineate the respective jurisdiction of the courts of each tier.¹⁶ Traditional study begins with a consideration of the range of matters assigned to these several courts, exploring the diverse (and sometimes extra-judicial) nature of their responsibilities (e.g., judging, instructing, preserving the *mesorah*, representing the

¹⁵ See Shalom Carmy, "Camino Real and Modern Talmud Study," *Modern Scholarship*, pp. 189-196. See also the formulation in Elman, "Progressive Derash," p. 251.

¹⁶ See *m. Sanhedrin* chapter 1:1-6.

people of Israel, etc.). Likewise, traditional analysis examines the kinds of legal or ritual processes which are under the supervision of the courts, and require a *ma'aseh bet din* (an official court procedure, e.g., fines, intercalations, or debatable cases such as administering divorces). Moreover, the conceptual method examines the difference among the three tiers of tribunals, and considers whether jurisdiction is distributed only according to original subject matter or also the complexity of the issue at hand (e.g., the relationship between *davar gadol*, an important matter, and *davar kashesh*, a difficult matter).¹⁷ Yet certain other basic questions do not surface in a traditional analysis, but deserve investigation:¹⁸ Why does *Sanhedrin* assign the judicial role to tribunals rather than a single judge? Elsewhere, rabbinic literature (as well as Biblical and Second Temple literature) is replete with descriptions of individual sages who dispense justice.¹⁹ Even prescriptive sources, such as the immediately proximate last mishna in *Bava Batra*, prescribe tutelage under a single judge.²⁰ Indeed, the Bible has ample attestations of the authority of individual judges, and contemporary juristic sources likewise portray a solo practitioner (especially sources within Roman jurisprudence).²¹ In fact, one of the more pronounced biblical subtexts for these opening *mishnayot* of *Sanhedrin* (especially as understood by the Bavli)²² is the foundational juristic text of Exodus 18. The Mosaic judiciary portrayed in this biblical chapter is composed of individual judges, not judicial panels, and yet the mishna depicts the judiciary as an institutional construct.

¹⁷ For some of these issues, see, e.g., R. Samuel Strashun, *Hagahot ve-Hiddushe ha-Rashash, Sanhedrin* 2a; R. Joseph B. Soloveitchik, *Kobets Hiddushei Torah* (Mekhon Yerushalayim: Jerusalem, 1984), pp. 47-65; *Shiurim le-Zekher Abba Mori* (Mekhon Yerushalayim: Jerusalem, 1982), Vol. 1, pp. 150-151; R. Isaac Zev Soloveitchik, *Hiddushei Maran Halevi Al ha-Torah* (Jerusalem, 1962), *Parshat Yitro; Hiddushe Maran Halevi al ha-Rambam* (Jerusalem, 1962), *Hil. Sanhedrin* 5:1; R. Hershel Schachter, *Erets ha-Ttavi* (Yeshiva University: New York, 1992), pp. 225-237; and various articles in the *Mesorah Journal*, volumes 11-12, 14.

¹⁸ For elaboration and specific references for this section, see the fifth chapter of my doctoral dissertation, *Between Royal Absolutism and an Independent Judiciary: The Evolution of Separation of Powers in Biblical, Second Temple and Rabbinic Texts* (Ph.D. Dissertation: Harvard University, 2010).

¹⁹ This insight was first made by H.P. Chajes in "Les Juges Juifs en Palestine de l'an 70- l'an 500," *REJ* 39 (1899) (reprinted in Hebrew in *Smaton Mishpat Ha-Ivri* 20 (1995-1997), pp. 429-443).

²⁰ *M. Bava Batra* 10:8. Likewise, according to various Talmudic passages a single judge may adjudicate in certain circumstances. See, e.g., *b. Sanh.* 5a, 6a.

²¹ For Roman jurisprudence, see, e.g., Barry Nicholas, *An Introduction to Roman Law* (Clarendon Press: Oxford, 1969), p. 18; and Hans Julius Wolff, *Roman Law: An Historical Introduction* (University of Oklahoma Press: Norman, 1951), p. 73.

²² See *b. Sanh.* 17a and 18a. See also the parallel Yerushalmi passage, *y. Sanh.* 1:4.

Analyzing the way rabbinic literature interprets the other central biblical passage which describes the function of the judiciary—Deuteronomy 17—confirms this same point. While the underlying biblical verses direct the most difficult judicial matters to the judge or the levitical priests, rabbinic exegesis describes a supreme institution of the Sanhedrin presiding over all such cases.²³ There is no option of turning to a single sage, and even the priests are represented as members of this supervisory body.

Similarly, evaluating the role of the priests within the court system according to *Sanhedrin* and other comparative sources reveals much about the nature of the judiciary. Biblically, the priests assume a leading judicial role (as accented in Deut. 17 and elsewhere), and Second Temple literature also affirms their controlling position. Likewise, certain rabbinic sources construct justice around the role of the priests.²⁴ Yet the main rabbinic interpretation of Deut. 17 reduces the role of the priests to a preference that they become members of the court tribunal.²⁵ Moreover, the judicial scheme of *Sanhedrin* never even records this proposition, and the sole passages that refer to the judicial role of priests merely note their eligibility to be members of the court system.²⁶ In fact, the first mention of the high priest in *Sanhedrin*—“the high priest may not be tried save by the court of seventy-one (mishna 1:5)” —actually underscores that he is subject to the jurisdiction of the Sanhedrin. Breaking with much of Second Temple literature where the high priest is depicted as the chief justice,²⁷ the mishna emphatically declares a jurisprudence which privileges the Sanhedrin, and subordinates the priests. An even more dramatic subversion is manifest in the mishna’s treatment of the judicial role of the king, who biblically and historically controlled justice, and according to the mishna is completely sequestered from the court’s procedures.²⁸

At first blush, the prevalence of judicial panels in *Sanhedrin* is simply an affirmation of the teaching in *Pirkei Avot* (4:8), “Judge not alone, for none may judge alone save One.” Yet, this mishna in *Avot* also requires

²³ See *Sifre* 153 and *m. Sanh.* 11:2.

²⁴ For biblical literature, see, e.g., Exod. 28:30; Deut. 19:17, 21:5; *Ezek.* 44:23-24; *Mal.* 2:6-7; for Second Temple literature, see, e.g., 1QS 2:19-20, 6:4-5; 8, *Let. Aris.* 3-5, 45; *ALD.* 13:16; *Ag. Ap.* 2:187, 194; and the sources cited in note 27 below; for rabbinic literature, see, e.g., *Sifre* 350 and possibly *m. Horayot* 2:1.

²⁵ See *Sifre* 153.

²⁶ See *m. Sanh.* 2:1 and *m. Sanh.* 4:2.

²⁷ See, e.g., *Ant.* 20:200-203; *Spec. Laws* 4:188-192; CD 12, 14; 1QS 9; and Matt 26:57-67.

²⁸ See my article “It’s Good to be King: the Monarch’s Role in the Mishna’s Political and Legal System,” *Hebraic Political Studies* 2: 3 (2007) 255-283.

TRADITION

more careful study. First, the mishna's formulation and placement (within tractate *Avot*) suggest that it is a supererogatory rule rather than an absolute requirement.²⁹ Moreover, other rabbinic passages expose the controversy, even polemic, surrounding this mishna. For instance, a Tosefta in *Bava Kamma* (8:14) records the following tannaitic statement: "R. Ishmael said: the household of my father was among the homeowners in the Galilee. Why was the property destroyed? Because they adjudicated civil matters alone..." Defying the declaration in *Avot*, R. Ishmael's ancestors judged alone, and one senses that enough others followed suit, requiring the recitation of this cautionary rabbinic anecdote. Equally notable is an elaborate *sugya* in *Yerushalmi Sanhedrin* which records the behavior of several rabbinic authorities whose practice was to judge alone, but also adduces the *Avot* passage to represent the opposing view, and, in a dramatic flourish, adds that even God only adjudicates alongside a celestial court.³⁰ Such rhetoric undoubtedly points to the controversy surrounding this issue.

When I studied *Sanhedrin* in a traditional setting most of these essential aspects of this tractate remained unexamined, although certain conceptual inquiries I pursued in yeshiva touched on some of these issues. Specifically, two interrelated Talmudic teachings address the standing of an individual judge. First, R. Aha teaches that a single judge may preside over a legal case according to the regulations of the Torah, and Shmuel rules that two judges have the authority to judge alone, although this practice is discouraged (see *Sanhedrin* 3a). These Amoraic statements were analyzed in light of the perplexing position of Rambam, who simultaneously codifies the teaching of R. Abahu (who rejects Shmuel) requiring a court of three judges alongside the ruling of R. Aha.³¹ Resolving this seeming inconsistency in Rambam invites an important distinction between judging (or instructing) and officiating as a court, which also recurs elsewhere in *Masekhet Sanhedrin*.³² Thus, traditional study or *lomdut* focuses on what, if any, is the judicial role of an individual judge, and how this compares to the jurisdiction of a tribunal. Second, even within the context of

²⁹ See *Tosafot b. Sanh.* 5a, s.v. "kegon"; and *Rambam Hil. Sanhedrin* 2:11.

³⁰ See *y. Sanh.* 1:1.

³¹ See *Rambam Hil. Sanhedrin* 2:10-11 and 5:15. See also Rabbi Meir Simha Hakohen, *Or Sameah*, *Hilkhot Sanhedrin* 2:10.

³² See R. Hershel Schachter, *Erets ha-Tsvi* (Yeshiva University: New York, 1992), pp. 225-237.

Perhaps this idea is also echoed in a loosely parallel debate in the rishonim about how many judges with *semikha* are necessary to confer *semikha*. See *Rambam Hil. Sanhedrin* 4:3 and *Yad Ramah* on *b. Sanh.* 14a.

a tribunal composed of multiple judges, there is the important discussion of R. Hayyim of Brisk concerning the status of a majority rule which applies in civil suits, even though this seems to violate the principle of *ein bolkhin be-mamon ahar ha-rov* (one does not follow the majority in monetary matters). In addressing this issue, R. Hayyim relates to whether one should conceptualize a court's ruling as a *per curiam* verdict, or the collation of individual viewpoints of distinct judges, an issue which also arises elsewhere in *Sanhedrin*.³³ This line of inquiry is essentially probing the degree to which the institution of the court effaces the presence of individual authorities.

In other words, *lomdut* sensitized me to these leading questions which are crucial for understanding the nature of judicial authority being advanced by the court system of *Sanhedrin*. Even so, it is only with the critical tools of academic study that I was able to realize how deep and pervasive these issues are within this tractate. Moreover, the latter tools exposed sociological, political, theological and ideological aspects of the nature of legal authority in rabbinic discourse that I was previously unable to access. All of these issues arise from a careful study of *Masekhet Sanhedrin*.

Only critical tools open up this material and allow these larger, vital themes to emerge—themes which are implicit in the analytical approach but take on a completely new dimension in the above analysis. I wish to underscore this point because it highlights that these tools focus on essential subject matter, and can often (although not always, as I discuss below) complement and deepen the findings of conceptual study. Frequently, those who learn in a traditional yeshiva setting assume that academic studies focus on secondary issues, at the margins of a *sugya*, rather than the heart of the matter.³⁴ These include using manuscripts to emend rabbinic texts, or examining the material culture prevalent during the rabbinic period. While these issues are plainly within the orbit of academic studies—and it is difficult to object to further enlightenment on such matters, even if they are secondary to more “central” issues—they hardly exhaust the range of critical interests, and stated in isolation offer a skewed perspective on the nature of the academic enterprise. Critical inquiry, broadly conceived, emphasizes at least four additional lines of inquiry (which I utilized to varying degrees in pursuing a critical analysis of

³³ See R. Hayyim Soloveitchik, *Hiddushei ha-Gerah al ha-Shas* (Jerusalem, 1965), *Bava Kamma* 27b, p. 166; and R. Isaac Zev Soloveitchik, *Sefer Hiddushei Rabbenu ha-Geriz ha-Levi* (Jerusalem, 1975), Vol. 5, p. 206. For a related Talmudic passage, see *b. Sanh.* 29-30.

³⁴ This assumption fosters the sense that the critical method is tedious or dry, alluded to above.

TRADITION

Sanhedrin), with significant implications for the study of the Talmud and the rest of rabbinic literature:³⁵

(1) *A synoptic study of rabbinic literature.* This approach calls for the examination of all parallel rabbinic traditions on a given topic, or even all variants of a given rabbinic statement. In a sense, this method is inspired by the rabbinic maxim, “The words of Torah are poor (i.e., scant) in one setting, and rich (i.e., elaborate) in another.”³⁶ But sometimes the relationship between synoptic sources is less harmonious and more discordant. While traditional learning will round out the *sugya* by looking to parallel Bavli passages (often following the trail of the *Tosafot*), the critical method systematically adduces all parallel recensions of a given teaching, whether in the Tannaitic (Mishna, Tosefta, Midrash Halakha) or the Amoraic (Bavli, Yerushalmi and Midrash Aggada) corpus. Juxtaposing alternative versions often provides a hint to which variant is the most authentic one, or helps uncover an inherent ambiguity in a given tradition, or displays a plurality of (subtly, but at times significantly) diverse traditions.

(2) *A diachronic study of rabbinic literature.* Rabbinic literature covers a vast expanse of time which is largely blurred by the synchronic nature of the redacted text. A primary aim of critical study is to sort the material temporally in order to map out the trajectory of development of rabbinic concepts. When so arranged, one can evaluate the transmission of traditions through successive generations, and also reconstruct any evolution in rabbinic ideas.³⁷

³⁵ I offer this catalog of methodological tools to illustrate what I mean by the critical method (including the more expansive dimensions of this method I alluded to above), and to focus on specific lines of inquiry that can potentially contribute to an integrated mode of Talmud study. There are various other tools of academic study that involve different aspects of lower and higher criticism (such as form criticism, source criticism and textual criticism). For a more systematic catalog of some of these methods, see the secondary references cited in note 44 below.

³⁶ See *y. Rosh ha-Shanah* 3:5.

³⁷ Evolution can happen in more than one way. Sometimes it is a function of adaptation, and other times it is a byproduct of the transmission process. For a fuller discussion, see Shamma Friedman, “*Ha-Beraitot sheba-Talmud ha-Bavli ve-yahasana la-Tosefta*,” *Atarah Le-Hayim: Mehkarim Ba-Sifrut Ha-Talmudit veba-Rabanit Li-Khevod Profesor Hayim Zalman Dimitrovski*, eds. Daniel Boyarin, Israel Francus, Israel M. Ta-Shma (Hebrew University Magnes Press: Jerusalem, 2000), pp. 163-201. See also the secondary references cited in note 44 below.

Mapping out the trajectory of rabbinic literature also helps hone in on the historical dimension of rabbinic teachings. It should be noted that even as the academic method situates rabbinic teachings within history, often rabbinic sources advance an ideology that aims to transcend the narrow circumstances of the present. But according to the

(3) *An analysis of the exegetical dimension of rabbinic literature.* A significant portion of rabbinic literature is exegetical in nature, and therefore this dimension of rabbinic thought deserves a meticulous and systematic analysis. While this characterization obviously encompasses works of Midrash Halakha and Aggada, it likewise extends to other genres of rabbinic literature, including many sections of the Talmud. In order to explore Talmudic hermeneutics, the critical study of the Talmud returns to the biblical source, examining the scriptural foundation alongside the rabbinic exegesis. After registering any gaps between the plain sense of a biblical verse and the rabbinic rendition, a thorough investigation attempts to reconstruct the hermeneutical process, and evaluate the implications of adopting a given interpretation. As a frame of reference, it is helpful to explore exegetical alternatives which surface in rabbinic and extra-rabbinic literature (see item 4 below). The generative or adaptive nature of rabbinic interpretation often emerges from this line of inquiry (see more in the conclusion below).

(4) *An evaluation of comparative traditions.* Rabbinic teachings can be constructively contextualized or differentiated by evaluating the wider cultural, societal and religious milieu in which they were composed or transmitted. A wider comparative lens considers the host culture in which rabbinic literature developed (e.g., Roman, Sassanian, Christian, Muslim, etc.). Often of greater relevance is a narrow lens which focuses internally within Jewish society, and considers how similarly situated Jews (living in roughly the same time and place as the rabbis, such as the authors of the Dead Sea Scrolls, Second Temple literature, Josephus, Philo, etc.) presented the biblical legacy, Jewish law and theology. Comparing rabbinic and extra-rabbinic literature helps set rabbinic teachings in sharp relief by highlighting distinctive emphases within rabbinic writings which would otherwise remain largely obscure.

My above observations regarding *Masekhet Sanhedrin* are informed by these four methods (alongside other critical methods),³⁸ and I am

academic method such writings should also often be understood as a particular kind of response to historical circumstances.

³⁸ For example, synoptic study (item 1) helps focus on the subordination of the high priest to, and the separation of the king from, the judiciary, and sheds light on the meaning of *m. Avot* 4:8; diachronic study (item 2) reveals how the notion of the king's separation from the judiciary is responded to in later rabbinic literature; the exegetical approach (item 3) examines how Exodus 18 and Deuteronomy 17 are interpreted in rabbinic literature; and the comparative approach (item 4) explores other (non-rabbinic) Jewish attitudes about the role of single, royal and priestly figures in the administration of justice.

TRADITION

convinced that these constitute powerful tools which will yield significant insights when applied to most *sugyot*. To be sure, elements of these methods—especially items 1 and 3—are already incorporated into the traditional study of certain Modern Orthodox *yeshivot*. On occasion, they expand the canon of relevant primary texts to include the Tosefta, Midrash Halakha and Yerushalmi.³⁹ Likewise, they return to the scriptural source in order to classify a law as a *de-oraita* regulation, and to compare the *peshat* with the rabbinic *derash*.⁴⁰ However, these methods are rarely employed systematically and they are not applied critically. When a wider corpus of rabbinic material is examined, it is rarely analyzed synoptically, and efforts to reconstruct rabbinic exegesis are frequently constrained by an air of inevitability. Moreover, the other two methodological tools are hardly utilized (and the comparative tool bears relevance for the exegetical one, as stated above).

A Modern Orthodox yeshiva which is deeply committed to tradition's encounter with the religiously meaningful aspects of modernity should cull from the best available methods from both modes of study. Complementing the conceptual illumination of the analytical method, the modern approach offers additional enlightenment from literary, historical and critical perspectives. When applied with rigor, devotion and humility, the distinctive synergy between these methodologies will reveal authentic, and even arresting, insights into the Talmud.⁴¹

It should be noted that my analysis leans more heavily on items 3 and 4 (utilizing a literary and historical perspective), which may ultimately make it more palatable to a traditional audience. The larger challenges to traditional assumptions undoubtedly come from tools of higher criticism (especially in certain varieties), which are more related to items 1 and 2, and other methods.

³⁹ More traditional circles have also broadened the canon of relevant primary texts, tracing back at least to the times of the Vilna Gaon and Netsiv. See Jay M. Harris, *How Do We Know This?: Midrash and the Fragmentation of Modern Judaism* (State University of New York Press: Albany, 1995), pp. 234-250; and Gil S. Perl, *Emek ha-Neziv: A Window into the Intellectual Universe of Rabbi Naftali Yehudah Berlin* (Ph.D. Dissertation: Harvard University, 2006),

⁴⁰ This trend can also be seen in certain classical works of traditional study, such as R. Joseph ben Meir Teomim's *Pri Megadim*, and various writings of R. Joseph Engel.

⁴¹ Admittedly, even if one acknowledges the legitimacy of certain aspects of the critical method, this does not necessarily lead to the conclusion that it should be invited into the *bet midrash* or integrated into an interdisciplinary mode of learning Talmud. I am advocating inviting the critical method into the *bet midrash* because of its important contributions to *Talmud Torah*, and I am further supporting an interdisciplinary mode of learning because of the rich potential for synergy between these approaches, which can significantly enhance the quality of *Talmud Torah*. Moreover, as I explain in the next paragraph, I think the fallout that arises from bifurcating and segregating these modes of study is problematic and detrimental.

In practical terms, I would then humbly suggest—before I complicate my position in the next section—that a flagship institution like Yeshiva University should offer more opportunities for such study, at least for students with certain capacities and proclivities (and there certainly is a small, but significant, group of such students). These opportunities should include a shiur or a *haburah*, the requisite *seforim* or databases, and a sense of institutional support. Most importantly, students who are interested in pursuing these methods should be encouraged to embrace a holistic approach to *Talmud Torah* which combines the traditional and critical methods. The deep divide or bifurcation that usually segregates these approaches is detrimental to the psyche and religious welfare of students, and can also stunt the potential achievements of *Talmud Torah*.

To concretize this point, allow me to return momentarily to an era at Yeshiva University which I only know about anecdotally. During the very decades that R. Soloveitchik *zt"l* enthralled *talmidim* of the analytic method with stunning shiurim, derashot and articles, Professor Avraham Weiss quietly developed a profound literary-critical methodology that was formative for the modern study of Talmud.⁴² From what I understand, there was hardly any interaction or interplay between these significant developments in Talmud study that concurrently transpired in the same nominal institution. From my vantage point, it is difficult not to be disappointed that there was not more cross-fertilization—as if the choice for a student had to be a stark either/or, rather than both/and. Accordingly, I consider myself fortunate to be a part of a small group of students from the next generation that gained much (indirectly) from both of these masters. In a similar vein, I hope that current students in the Yeshiva University *bet midrash* are offered such an opportunity. Rather than just affording distinct paths for pursuing both methods to select students (a *bet midrash* and a separate institute of Jewish studies), they should be invited, and taught, to combine these approaches in a single discipline. Likewise, a real desideratum for an institution like Yeshiva University is to publish a journal dedicated (at least in part) to an integrated approach to the study of Talmud and rabbinic literature which is on par with Modern Orthodox journals such as *Sinai*, *Netuim* and *Sidra*.

* * *

⁴² On this methodology, see Meyer S. Feldblum, “Prof. Abraham Weiss: His Approach and Contribution to Talmudic Scholarship,” *The Abraham Weiss Jubilee Volume* (New York, 1964), English Section, p. 8.

I thank Professor Benjamin Weiss, a son of the late Professor Avraham Weiss, for providing me with additional information about his father in an interview held at Hebrew University in May 2010.

TRADITION

So far I have described ways that conceptual intuitions open fruitful lines of inquiry that can be greatly expanded with modern tools of study. Likewise, I have discussed critical methods which surface in a piecemeal fashion in the *bet midrash*, and have encouraged their greater and more systematic utilization. The portrait that I have been painting has been largely synthetic and collaborative. But there is a legitimate reason that the Modern Orthodox *bet midrash* has resisted the academic method, beyond being discouraged by its occasional tediousness, or even suspicious about its historical genesis, or certain of its contemporary practitioners. Grappling with this dimension of the modern study of Talmud raises thorny questions that are not easily resolved, even as they must be directly confronted.

When I reviewed the previous Orthodox Forum articles that addressed the academic method of studying Talmud I was struck by how they both understated the nature of this approach (what the academic enterprise is all about) and overstated its compatibility with the traditional method. By understating, they focused largely on issues of recession and material culture, in the manner I said above. They illustrated fascinating, if esoteric, ways that the academic method can illuminate obscure *sugyot*. But they downplayed the manner in which it bears upon each *sugya*—aiming to deconstruct, delimit, and contextualize its teachings, and exposing its revisions, adaptations and transformations. In this sense they also overstated, or were too sanguine about the potential harmony between the traditional and critical methods.⁴³

Certain leading academic scholars of modern Talmudic study have written methodological essays in which they minimize the novelty of their approach by camouflaging it in the cloak of traditionalism. They partially achieve this by finding support for their critical methodology in select comments of the *Geonim* or *Rishonim*.⁴⁴ While this perhaps reflects

⁴³ In studying *Sanhedrin*, I have encountered various *sugyot* where the critical method leads to conclusions which significantly diverge from the traditional approach. See, e.g., the sixth chapter of my dissertation, *Between Royal Absolutism and an Independent Judiciary*.

⁴⁴ See Shamma Friedman, *Talmud Arukh: Perek Ha-Sokher et ha-Umanin: Bavli Bava Metsi'a Perek Shishi: Mahadurah al Derekh ha-Mehkarim Peirush ha-Sugyot* (The Jewish Theological Seminary of America: Jerusalem, 1990), Vol. 2, pp. 7-23; and “*Perek Ha-Ishah Rabbah ba-Bavli, be-Tseiruf Mavo Kelali al Derekh Heker ha-Sugya*,” in *Mehkarim u-Mekorot*, ed. H. Z. Dimitrovsky (Jewish Theological Seminary of America: New York, 1977), pp. 283-321. See also David Weiss Halivni, *Mekorot u-Masorot: Beurim ba-Talmud: Masekhet Bava Batra* (Hebrew University Magnes Press: Jerusalem, 2007), pp. 1-148; and *Mekorot u-Masorot: Beurim ba-Talmud: Masekhet Bava Metsia* (Hebrew University Magnes Press: Jerusalem, 2003), pp. 11-26.

admirable religious sensitivities (a new approach should not be applied lightly to a sacred body of literature), it also has always struck me as largely disingenuous. No doubt, the *Geonim* and *Rishonim* had a degree of awareness of certain issues that preoccupy modern scholarship, but their overall approaches to interpreting the Talmud diverge dramatically. Indeed, the critical method, which situates rabbinic literature within history and critically evaluates its successive stages of transmission, can raise fundamental challenges to assumptions, methods and conclusions prevalent throughout traditional modes of learning (from geonic times until today).⁴⁵ A subset of modern Jewish studies, the academic study of Talmud shares the same critical orientation (at least in significant respects)⁴⁶ which has been captured so vividly by Yosef Yerushalmi in his seminal work, *Zakhor: Jewish History and Jewish Memory*.⁴⁷ Tracing back to the development of *Wissenschaft des Judentums* during the nineteenth century, the critical method, as Yerushalmi underscores, in many ways constitutes a radically new venture in Jewish studies. In seeking to retrieve an accurate understanding of texts or historical events, the critical approach is willing to disturb or reverse hallowed assumptions, and rupture the veneer of coherence in sacred transmissions. Inevitably, such an approach can present an assault on traditional law and lore. If there has been a staunch resistance in the *bet midrash* to the critical method, it is based on some deeply correct intuition

In addition, see the related discussion in Elman, "Progressive Derash," p. 252; and David Henshke, *Mishnah Rishonah be-Talmudam shel Tannaim Aharonim Sugyot be-Dine Shomrim* (Bar Ilan University Press: Ramat Gan, 1997), pp. 1-3.

⁴⁵ Although traditional methods of study have certainly evolved since geonic times, and the prevalent analytic method in *yeshivot* today is of a somewhat recent vintage (see note 4 above), all of these traditional approaches endorse assumptions, methods and conclusions which are significantly different from those which are implicit in the critical method of studying Talmud. These considerable variances trigger much traditional opposition to the critical method.

Moreover, when one contends with the collective traditional opposition to the critical study of the Talmud one is not merely dealing with an extreme, albeit formidable, opposition issuing from one sector of the traditional world (such as the *Hazon Ish's* opposition to the use of manuscripts), but rather a majority position held by most traditional learners who vociferously object to certain premises of modern critics.

⁴⁶ It should be stated unequivocally that religious practitioners of modern Talmudic studies (and other branches of modern Jewish studies) do not fully share in the orientation described by Professor Yerushalmi. Specifically, Yerushalmi emphasizes the way that the process of secularization reflected in modern critical studies undermines the theological and providential dimensions of Jewish studies. For religious practitioners, these latter dimensions can certainly be retained, even if the critical methodology can be applied independently of those creedal convictions.

⁴⁷ Yosef Hayim Yerushalmi, *Zakhor: Jewish History and Jewish Memory* (University of Washington Press: Seattle, 1982).

TRADITION

about its essence. R. Samson Raphael Hirsch objected to the learning advanced in the Berlin Rabbiner Seminar on these grounds, and his mindset persists in the opposition that pervades an institution like Yeshiva University to this very day.⁴⁸

How should one navigate the conflict between the traditional and modern approaches when the productive synthesis I described above becomes unattainable? Several of the luminaries of Modern Orthodoxy have unequivocally championed the traditional approach, and have explicitly or implicitly rejected the overall legitimacy of the latter approach. A more moderate view describes the traditional method as the primary one and the critical method as supplementary. A third formulation segregates these approaches: Gemara in the *bet midrash*, and Talmud in the academy. At the other end of the spectrum, of course, some academics (even Modern Orthodox ones) have rejected the traditional method of learning altogether.⁴⁹ My own view on this matter is deeply torn. I take seriously the potential eroding impact of critical studies (and heed the cautionary warning of leading rabbinic authorities), but I find it difficult to turn an eye away from an approach which is meticulously argued and defended, and whose conclusions are profound and persuasive. Recently, I reflected on this topic for a symposium concerning high school and Israel (post high school) education and I tended toward a more conservative approach.⁵⁰ But at a certain age or stage the pedagogic considerations I raised in that context are mitigated, and the ultimate worth of the endeavor has to be assessed. If the modern method of studying Talmud is a worthwhile enterprise, then I believe it also should be a component of the *bet midrash* curriculum as well. Indeed, it is precisely within the confines of yeshiva that the parameters of inquiry can be liberally supervised and oriented in the most constructive manner, and in the optimal religious environment.⁵¹

⁴⁸ On R. Hirsch and his opposition to the Berlin approach, see Shapiro, *Between the Yeshiva World*, pp. 27-84; Breuer, *Modernity Within Tradition*, pp. 125-202; David Ellenson, *Rabbi Esriel Hildesheimer and the Creation of a Modern Jewish Orthodoxy* (University of Alabama Press: Tuscaloosa, 1990), pp. 73-170; and Robert Liberles, *Religious Conflict in Social Context: The Resurgence of Orthodox Judaism in Frankfurt Am Main, 1838-1877* (Greenwood Press: Westport, 1985) pp. 108-230.

⁴⁹ This is the undercurrent of certain pieces cited in notes 14 and 44 above.

⁵⁰ See my piece in the Meorot symposium, "On Modern Orthodox Day School Education," *Meorot Journal* (September 2009), available at <http://www.yctora.org/content/view/552/10>.

⁵¹ I am not addressing, and obviously not resolving, the crucial question of how this certain allowance of critical studies—which are in tension with traditional learning—should be implemented in the *bet midrash*. Moreover, I am uncertain whether

Before concluding, I think it is important to realize what is at stake in this discussion. While the narrow topic at hand is one of *derekh ha-limud*, it obviously dovetails with the larger question of the relationship between the boundaries of faith and the value of freedom of inquiry,⁵² or broader tensions generated by the encounter of tradition with modernity. Moreover, even focusing on the more immediate subject of Talmudic methodology, the impact of adopting a modern critical approach extends beyond the meaning of numerous *sugyot* (including weighty or *lomdishe* ones) and intersects with certain systemic issues related to the overall nature of our religious tradition. Although these are delicate and complex matters which require further careful consideration in a different forum, they should at least be briefly enumerated here. One, the critical approach, as stated, conceives of the *mesorah* as historically embedded. This allows for the notion of progression and development, and even assumes that this is an inevitable consequence of religion being transmitted to successive generations over time. Historicizing need not lead to relativism, but it does move away from immutable or inexorable readings. Second, encountering rabbinic literature alongside other extra-rabbinic Jewish traditions, such as the intensive ritual practices recorded in the Dead Sea Scrolls, influences the way one characterizes rabbinic law. Rather than viewing the Talmud as stringent or burdensome, rabbinic tradition adopts a relatively lenient approach in comparison to other contemporary voices. In other words, the critical method projects rabbinic law as essentially different from the way it is commonly perceived in today's popular imagination. Third, rabbinic law is often seen as growing organically and systematically. But the critical method recasts rabbinic literature (perhaps in exaggerated terms, but there is an important kernel of truth here, assuming this

there is one distinctive solution to this question. Instead, I remain optimistic that an optimal mode of implementation can be worked out on a case-by-case basis, in a manner that is sensitively tailored to the dynamics of each *bet midrash*. If implemented with sensitivity and forethought, the introduction of the academic method into the *bet midrash* should generate many of the benefits described above, without leading to much dampening of the overall enthusiasm of the *bet midrash* for *Talmud Torah*.

⁵² See the exchange among R. Yehuda Parnes, Prof. David Berger, Prof. Lawrence Kaplan, and R. Shalom Carmy in *Torah Umadda Journal* 1 (1989), pp. 68-71; *Torah Umadda Journal* 2 (1990), pp. 37-50; and *Torah Umadda Journal* 3 (1991-1992), pp. 37-51, 90-97.

While the role of the academic approach of studying Talmud in a traditional setting raises significant challenges, it is certainly not of the same order of difficulty as the question of the legitimacy of the academic mode of studying Bible. Embracing a new approach to studying the Bible requires greater caution since it implicates a different kind of a foundational belief (even if distinguishing the study of Bible from normative implications is more easily achieved).

TRADITION

method is correct) as a bold reworking of earlier traditions. According to this description, rabbis relay Scriptural interpretations and earlier rabbinic doctrines not as passive transmitters, but rather as active teachers or jurists, who occasionally deliberately revise rabbinic law. Given that the ones who depicted the rabbinic process in these terms were the early reformers, there is a significant danger of overstating, or manipulating, such a characterization. Nevertheless, the problematic ancestry of this account does not dispose of the question of whether there is a modicum of truth here which has been largely muted, and could be influential if applied more gradually and responsibly.

These possible implications are not only sweeping, but crucial, and I for one think that they need to be seriously engaged in order to better comprehend the essence of our religious tradition. They also help capture why fully embracing the critical method is no simple matter. But Modern Orthodoxy never saw simplicity as its mantle.