Halakhic Change vs. Demographic Change

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Preface

This article was inspired by the critical work of Jacobs on the halakhic process, A Tree of
Life (2000). His attention to the influences of social, economic, and political factors in
halakha coincided with my interests in the sociology of pesika, halakhic decision-making, and in the development of Orthodox Judaism in the United States. In an earlier work, Jacobs asserted that “the Torah did not simply drop down from heaven but is the result of the divine-human encounter through the ages” (1995, 3). That is a statement that strongly lends itself to rejection by traditionalists, especially the Orthodox.

In A Tree of Life, Jacobs appears to have modified his earlier assertion in such a way as to be more acceptable to some Orthodox thinkers. He writes that, when he uses the termTorah, he includes the Written Law, Oral Law, and halakha, which “has grown through the tender care and skill of responsible gardeners instead of,

as in the view of many fundamentalists, growing of its own accord solely by divine command" (Jacobs 2000, xv).

There are those, typically ultra-Orthodox, or "Hareidi" Jews who insist that both the
Written and Oral Laws as we know them were given at Sinai, and any mention of halakhic development is heresy. Jacobs goes even further and asserts that
the very notion that the halakha has a history and that it developed is anathema to
the traditional halakhist, who operates on the massive assumption that the Torah, both in its written form, the Pentateuch, and its oral form, as found in the talmudic
literature, was directly conveyed by God to Moses either at Sinai or during the forty
years of wandering through the wilderness. Furthermore, the traditional halakhists
accept implicitly that the talmudic literature contains the whole of the Oral Torah, that even those laws and ordinances called rabbinic are eternally binding, and that,
as we have seen, the Talmud is the final authority and can never be countermanded.
(2000, 222)

This article modifies Jacobs's assertion through an examination of changes in American
Orthodox Judaism from the end of the nineteenth to the beginning of the twenty-first centuries. It first summarizes cultural change within American Orthodoxy (Waxman 2003, 2010, 2012) and then examines change in the halakha-related sphere, that is, what is deemed to be religiously acceptable within the halakha-observant community. The article concludes with a consideration of how the American model offers insight in the discussion of Louis Jacobs and his notorious departure from the British Orthodox rabbinate.

Cultural Change within American Orthodoxy

The denominational designation "Orthodox" did not exist in the United States until the mass immigration of Jews from Eastern Europe. Thus, when we speak of American Orthodox Judaism, we are essentially referring to Orthodox Judaism that was transplanted from Eastern Europe. Some prominent Eastern European Orthodox rabbis, such as Israel Meir Hacohen Kagan (1838–1933), popularly known as the "Chafetz Chaim," opposed immigration to the Unites States. Some

Eastern European Orthodox rabbis who immigrated were highly critical of American society and culture and saw little future for “authentic” Judaism there. Moses Weinberger, for example, wrote a broad and stinging critique of the deplorable condition of traditional Judaism in New York, in which, among many others, he lambasted the Constitutional notion of separation of religion and state. Another, Jacob David Wilowsky (1845–1913), who was the Rabbi of Slutzk (now Belarus) and was commonly known as “the Ridvaz,” is alleged to have condemned anyone who came to America because Judaism was stepped upon there, and anyone who left Europe left not only their home but their Torah, Talmud, yeshivas, and sages.

Less than 50 years later, Moshe Feinstein (1895–1986), Rabbi of Luban (now Belarus) until his emigration to the United States in 1937, headed a yeshiva in New York and became a leading authority of Jewish religious law within Orthodox circles. He gave a sermon in which he lauded America’s separation of religion of state. Contra Weinberger, he asserted that in enforcing separation of religion and state, the government of the Unites States is following the will of God, and that is the reason the country flourished. Consequently, Jews are obligated to pray that the government will succeed in all of its undertakings.

In contrast to the dismal state of Jewish education described by both Weinberger and Wilowsky, and their pessimism about the future of Judaism in America, a number of high-level yeshiva seminaries, most transplanted from Eastern Europe, were established during the 1930s and 1940s. A movement of primary- and secondary-level yeshiva Day Schools was also formed in the 1940s. These sparked the founding of Day Schools that provide intensive Jewish education along with a quality secular curriculum, and there was a boom in the growth of the Day School movement from the Second World War to the mid-1970s in cities and neighborhoods across the country. These Day Schools often became feeder-schools for higher-level yeshivas and, by the fourth quarter of the twentieth century, the number of Jews learning in post-high school yeshiva seminaries was greater in the United States than it had been during the heyday of Jewish Eastern Europe.

Ironically, this type of Day School, which combined both sacred and secular education,
was anathema to the Orthodox rabbinic leadership in Eastern Europe—and still is to the Hareidi rabbinic leadership in Israel. Many of the same rabbinic leaders who inspired the Day School movement had previously adamantly opposed it. As it turned out, the Day School movement is perhaps the most significant innovation

enabling the survival and growth of Orthodox Judaism in America.

The Americanization of Orthodox Judaism stands out in the approach of the rabbinic
leadership to language, especially in sacred learning. Initially, English was deemed “goyish,” a non-Jewish language contributing to an assimilation process. There had been even stronger opposition to English in sacred settings, and calls were issued for the exclusive use of Yiddish in rabbinic sermons and in Jewish education. In contrast, the contemporary generation of even “Hareidi” Jews in the United States not only speaks English, their sacred learning is also in English—more properly, “Yinglish” or “Yeshivish” (Weiser 1995; Benor 2012)—and an increasing number of sacred texts are published in English, mostly but not exclusively by the ultra-Orthodox ArtScroll Publishers. At the celebration of the completion of the Talmud cycle, Siyum HaShas, at the MetLife Stadium in New Jersey in the summer of 2012, which was the world’s largest gathering of Jews, sponsored by Agudath Israel of the United States, most of the speeches, lectures, and salutations were in English.

Ultra-Orthodox Judaism was traditionally opposed to secular higher education, and fiction was alien to it. Today, American ultra-Orthodoxy utilizes cutting-edge psychology and counseling terminology and techniques in its popular literature, and a new genre of ultra-Orthodox fiction has emerged (Finkelman 2011). Likewise, sport was shunned as being part of Greek, that is, pagan culture. Today, American Orthodox Jews of all variations engage in sports both as observers and as consumers of sports salons perceiving the benefits and importance of physical fitness (Gross 2004; Gurock 2005; Fineblum Raub 2012). Finally, whereas popular music was previously viewed as non-Jewish and was avoided, contemporary American Orthodoxy has enthusiastically adapted popular music by giving it a Jewish bent (Kligman 1996, 2001, 2005).

Equally interesting, if not even more so, is the impact that social change has had on
traditional Jewish religious practice. A series of American Orthodox halakhic innovations
will now be briefly indicated. An extensive analysis and discussion of them await book-length treatment.

Decorum in Shul

The first major attempt at reforming Jewish religious services in the United States took place in Charleston, South Carolina, in 1824. Forty-seven members of

Congregation Beth Elohim, who were unhappy with synagogue services, organized and attempted to reform the service by abbreviating it, having parts of the service read in both Hebrew and English, eliminating the practice of auctioning synagogue honors, and having a weekly discourse, or sermon, in English. These reforms were radical at that time, and the leadership of Beth Elohim rejected them. This led to the group splitting from the parent congregation and forming their own community, which then introduced more radical reforms (Waxman 1983, 12–13). Ironically, the group's initial demands are quite compatible with contemporary centrist Orthodox synagogue services in America.

Talmud for Women

Until the twentieth century, it was axiomatic that females were not to be taught, or engage in, Torah study. This was based on the opinion of Rabbi Eliezer, in the BabylonianTalmud (Sotah 21b) and reiterated by Maimonides (Laws of Talmud Torah 1:17). During the first half of the twentieth century, Rabbi Israel Meir Hacohen Kagan [1] and the Lubavitcher Rebbe asserted that, in these days, women are obligated to study the Written Law and those laws that specifically pertain to them. The Maimonides School, a Day School in Boston founded by Rabbi Joseph B. Soloveitchik, was the first Orthodox Day School in America to provide co-education, including Talmud study, through high school (Farber 2003). Soloveitchik was widely revered as an outstanding Talmud scholar and halakhic authority, and in 1977 he gave the inaugural lecture at the opening of the Beit Midrash program at Yeshiva University's Stern College for Women, thereby indicating his support of educational equality at the highest levels (Helfgot 2005, xxi). Subsequently, Yeshiva University established a Graduate Program for Women in Advanced Talmudic Studies, and several other Orthodox institutions of higher Jewish learning for women have been established.

Bat Mitzvah

In his first responsum dealing with the issue of Bat Mitzvah, written in 1956, Rabbi Moshe Feinstein—widely known as "Reb Moshe"—asserted that there is no source for celebration and it is in fact simple nonsense ("hevel bèalma"); the meal in honor of the Bat Mitzvah is not a "decreed dinner" ("sèudat mitzvah") and has no religious significance; and it is a violation of the sanctity of the synagogue to hold the ceremony there (Feinstein 1959a, 170). A quarter century later, he retained his opposition to holding the ceremony in the sanctuary of the synagogue but relented somewhat and permitted, albeit warily, having a kiddush in honor of a Bat Mitzvah in the social hall of the synagogue (Feinstein 1981, 47–48).

A careful reading of his responsa on Bat Mitzvah suggests that his basic opposition was to having the ceremony in the synagogue because of his opposition to changes in synagogue ritual and practice, alongside his steadfast opposition to Conservative and Reform Judaism. If the Bat Mitzvah celebration was to be held within the home, he did not object. Indeed, a number of his elders and colleagues are reported to have held such celebrations even in Lithuania (Baumel Joseph 2002; Pensak 2004). Be that as it may, increasing numbers of Orthodox now celebrate Bat Mitzvah in a communal setting, most typically in a social hall and frequently as a women-only ceremony. Some are also finding ways to hold the ceremony in the sanctuary in ways that are now deemed to be halakhically approved.

Non-Observant Jews

Feinstein's opposition to non-Orthodox Judaism was steadfast. He considered both Conservative and Reform Judaism heretical. Reform Judaism does not even merit much discussion in his work, and he merely dismissed its rabbis as heretics. For example, in a
responsum on whether it is proper to honor Reform and Conservative rabbis with blessings at Jewish organizational banquets, he asserts that even if they pronounced the blessing properly, since they are (obviously) heretics their blessings are invalid. Their heretical nature was deemed to need no elaboration (Feinstein 1963, 237–238). He addressed Conservative Judaism in greater detail. In a number of responsa, he consistently emphasized its heretical nature. For example, in a responsum on the question of whether one can organize a minyan, a quorum, to pray in a room within a synagogue whose sanctuary does not conform with Orthodox standards, he distinguished between Orthodox and Conservative synagogues. In a Conservative synagogue, he asserted, one should not make a minyan in any room, "because they have announced that they are a group of heretics who reject a number of Torah laws" (Feinstein 1981, 174). One should keep apart from them, "because those who deny even one item from the Torah are considered deniers of the Torah," and one must distance oneself from heretics. However, in an Orthodox synagogue which is ritually unfit—for example, it has no mehitza, separation between men and women, or uses a microphone—the members "are not heretics, Heaven forbid; they treat the laws lightly but they do not deny them," and thus there is no obligation to distance oneself from them.

With respect to non-observant Jews, Feinstein adopted a more conciliatory position and ruled in direct opposition to Israel Meir Hacohen Kagan, whose multi-

volume halakhic work, Mishna Berura, is widely viewed as authoritative. Whereas the latter cites precedents and suggests that Sabbath violators cannot be counted as one of the minimum10 adult males necessary for a minyan (Kagan 1952, Vol. 1, 174), Feinstein allows them to be counted (1959a, 66–67). In addition, he allows them to be called up to the Torah, unless they are overt heretics (Feinstein 1973a, 311). He also allows suspected Sabbath desecraters to be appointed President of a synagogue; only those who publicly and brazenly do so are barred (Feinstein 1973a, 310–311). Likewise, he ruled that a kohen who is not a Sabbath observer may be permitted to go up and bless the congregation (Feinstein 1959a, 89–90). In each case, Feinstein, the foremost halakhic authority in twentieth-century American Orthodoxy, was apparently influenced by the social and cultural, including religious, patterns of American Orthodox Jewry. He was willing to accommodate nonobservant Jews who did not challenge the authority of Orthodoxy. Those who did challenge the boundaries of Orthodoxy and its authority were deemed to be beyond the pale.

Eruv

The phenomenon of the eruv (pl. eruvin), a symbolic enclosure of a neighborhood or community to allow Jews to carry on the Sabbath within its perimeters in cities across the United States, is another example of the impact of social change on traditional Jewish religious practice and halakha. Many who are familiar with Orthodox amenities in American cities today might be very surprised to learn that until 1970, there were only two cities throughout the United States that had an eruv, and both were highly controversial. The first, established in 1894, was in St. Louis, Missouri. New York City had two eruv controversies. The first, on Manhattan’s East side, in 1905, ended with it being widely dismissed as unacceptable. The second stirred up controversy from 1949 to 1962 over the idea of an eruv around the entire island of Manhattan (Mintz 2011). By 2011, there were more than 150 eruvin in communities across the United States. A variety of sociological factors, perhaps most significant among them being the social and geographic mobility of the Orthodox—with many of them moving to the suburbs in the 1970s and 1980s—contributed to the increased halakhic validity and spread of eruvin.

Electric Timers (“Shabbos Clocks”)

When electric timers were first introduced, there was resistance in the Orthodox community, based on several halakhic issues related to their use in controlling electrical
appliances on the Sabbath. In the 1970s, Feinstein wrote two responsa in which

he emphatically prohibited the use of timers because they distort the objective and desecrate the sanctity of the Sabbath. He did, however, reluctantly permit their use for setting lights to go on and off on the Sabbath, because there was precedent for it in synagogues, and it contributes to the enjoyment, and thus the sanctity, of the Sabbath. For all other appliances, however, he categorically prohibited them (Feinstein 1981, 61, 91–93). Today, however, it appears that such timers are widely used within the Orthodox community for a variety of other appliances, such as home heating, air conditioning, and warming food, as well as a variety of others that strain the intellect to consider within the category of actions that contribute to the sanctity of the Sabbath.

Halav Yisrael

According to halakha, milk must be under supervision by an observant Jewish adult to
assure that it is indeed cow's milk, halav yisrael, and not the milk of a non-kosher animal. In a number of responsa during 1954, Feinstein ruled that, in the United States, milk that is under government supervision is surely cow's milk, because the dairy would be severely penalized for violating the law. Therefore, all milk under the label of a reputable company is kosher (Feinstein 1959b, 82–89). In 1970, Feinstein reiterated his lenient ruling. However, he also added that it is proper for one who is punctiliously observant to be strict and use only halav yisrael. Principals in yeshiva Day Schools, he asserted, should certainly provide only halav yisrael to their students, even if it costs the yeshivot more money, because there is an educational lesson that the students will learn, namely, that Torah Jews should be stringent even if an action entails only a slight chance of involving something prohibited (Feinstein 1973b, 46). This is an example of Feinstein himself taking a lenient position but bowing to growing social pressure for greater stringency, namely, there were already a number of dairies selling halav yisrael, and there was an increasing population of consumers for it.

It is commonplace to assume that the influence of American society and culture is toward greater leniency in religious practice. Indeed, this is often the case, as the above examples indicate. In fact, however, the impact of the American experience cuts both ways, at times towards greater leniency but at times toward greater stringency. The last case cited, halav yisrael, is just such an example of greater stringency. Another interesting one is found in one of the posthumously published volumes of Feinstein's responsa. When asked if prayer in a place not designated as a synagogue requires a mehitza between men and women, Feinstein relates that in all the generations it was typical that occasionally a poor

woman entered the
study hall to receive charity, or a women mourner to say Kaddish, and the actual halakha in this matter needs consideration and depends on many factors. (1996, 20)

In most American Orthodox study halls, let alone synagogues, not only would a woman not be permitted to enter, she would also be discouraged, if not prohibited, from saying Kaddish.[2] The phenomenon of “the hareidization of American Orthodox Judaism,” including a number of other examples of such stringencies, has been analyzed elsewhere (Waxman 1998; Heilman 2006). What is now called for is an analysis identifying and explaining the criteria under which stringency emerges and those under which there are moves to leniency.[3]

Halakha and Meta-Halakha

In the Introduction to the second edition of his book, A Tree of Life, Louis Jacobs reiterates his argument of human involvement in halakha. He contrasts two “exemplars of opposite approaches to the halakhic process—respectively, the dynamic and subjective versus the static and objective” (Jacobs 2000, xvii). The latter he portrays as the Orthodox approach and the former as that of Conservative Judaism. In point of fact, there is variety in Orthodox approaches with respect to the relationship between the decisor and his halakhic decision.

Jacobs cites David Bleich as the exemplar of “the static and objective” approach. Indeed, Bleich does portray halakha as a science, in which “there is no room for subjectivity” (1995, xiii). More recently, Bleich has elaborated and clarified his position:

[H]alakhic decision-making is indeed an art as well as a science. Its kunst lies precisely in the ability to make judgment calls in evaluating citations, precedents, arguments, etc. It is not sufficient for a halakhic decisor to have a full command of relevant sources. If so, in theory at least, the decisor par excellence would be a computer rather than a person. The decisor must have a keen understanding of the underlying principles and postulates of Halakha as well as of their applicable ramifications and must be capable of applying them with fidelity to matters placed before him. No amount of book learning can compensate for inadequacy in what may be termed the “artistic” component. The epithet “a donkey carrying books” is the derisive reference employed in rabbinic literature to describe such a person. (2006, 88)

Soloveitchik presented his conception somewhat differently:

[T]he mutual connection between law and event does not take place within the realm of pure halakhic thought, but rather within the depths of the halakhic man's soul. The event is a psychological impetus, prodding pure thought into its track. However, once pure thought begins to move in its specific track, it performs its movement not in surrender to the event, but rather in obedience to the normative-ideal lawfulness particular to it. … To what is this comparable? To a satellite that was launched into a particular orbit. Although the launching of the satellite into orbit is dependent on the force of the thrust. Once the object arrived at its particular orbit, it begins to move with amazing precision according to the speed unique to that orbit, and the force of the thrust cannot increase or decrease it at all. (1982, 77–78)

Soloveitchik's approach is reminiscent of Max Weber's thought with respect to the place of values and emotions in sociological research; that is, that the sociologist's values clearly influence the areas and topics he or she selects to study. However, once the research actually begins, the rules of scientific research dominate, and all evaluations are made solely on the basis of empirical evidence. The researchers must be value free and ignore their personal thoughts and prejudices (Weber 1949, 49–112).[4] Of course, as anyone who has engaged in social research knows, neutrality of values and emotions is very difficult, if not impossible, to achieve. Humans are influenced in many ways of which we are frequently unaware. Along these lines Rabbi Aharon Lichtenstein points to the distinction his father-in-law, Soloveitchik, drew between psychosocial elements and pure thought in the halakhic process, and declares, "It is a nice distinction, and I confess that I am not certain it can be readily sustained in practice" (2003, 173).[5]

Dr. Haym Soloveitchik suggests other influences on halakha. He avers that until the era of the Crusades, there was no known religious permission (heter) to commit suicide in the face of forced conversion to Christianity and, indeed, "[t]he magnitude of this halakhic breach is enormous." However, with time and events, the notion that such suicide is actually murder became untenable, and the sages of Ashkenaz developed,
in the course of time, a doctrine of the permissibility of voluntary martyrdom, and even one allowing suicide. They did this by scrounging all the canonized and semi-canonized literature for supportive tales and hortatory aggadah, all of dubious legal worth. But by massing them together, Ashkenazic scholars produced, with a few deft twists, a tenable, if not quite persuasive, case for the permissibility of suicide in times of religious persecution. (Soloveitchik 1987, 209–210)

Soloveitchik does not claim that the sages of Ashkenaz completely redefined the halakha. He argues that the experiences, trials and tribulations, and perspectives guided them and influenced them in their studies and explanations of the Talmud in ways that legitimated existing practices, the status quo.[6]He does not indicate whether this is what his father, Joseph B. Soloveitchik, meant by “the launching of the satellite into orbit,” or whether it is “once the object arrived at its particular orbit,” but it does appear that Haym Soloveitchik attributes greater halakhic legitimacy to the roles of experience and perspective than did his father. As a student of Jacob Katz, who emphasized the impact of the economy on halakha (e.g., Katz 1989), Soloveitchik’s works on usury and wine are examples of that (1985, 2003, 2008).[7]

There are few today in the fields of philosophy and the social sciences who think that it is possible to draw lines and actually be ethically and value-free. Israel Lipkin of Salant, known as Israel Salanter (1810–1883), who initially headed a yeshiva and subsequently was the father of the Musar Movement,[8] agreed. As he explained,

Man, inasmuch as he is man, even though it is within his capacity and power to strip [le-hafshit] his intellect from the arousal of his soul-forces until these soul-forces are quiescent and resting (unaroused, so that they do not breach the intellectual faculty and pervert it), nonetheless man is human, his soul-forces are in him, it is not within his power to separate them [lehafrisham] from his intellect. Thus it is not within man’s capacity to arrive at True Intellect [sekhel amitti] wholly separated [ha-mufrash] and disembodied [ha-muvdal] from soul-forces, and the Torah is given to man to be adjudicated according to human intellect (it being purified as much as possible; see Bekhorot 17b: “Divine Law said: Do it, and in whatever way you are able to do it, it will be satisfactory”).… (Goldberg 1982, 119)

Indeed, it appears that the sages of the Talmud recognized the inability to separate subjective forces from adjudication and, therefore, the Beraita declared that certain people should not be appointed as judges to the Sanhedrin, or supreme court: “We do not appoint to the Sanhedrin an old man, a eunuch or one who is childless” (Babylonian Talmud, Sanhedrin 36b). Maimonides suggested the reasoning involved: “We should not appoint to any Sanhedrin a very old man or a eunuch, for they possess the trait of cruelty, nor one who is childless, so that the judge should be merciful” (Yad Hahazakah, Judges, Laws of Sanhedrin 2:3).

Between Change in American Orthodoxy and the Rejection of Jacobs

In 1961, Chief Rabbi Israel Brodie caused a storm in British Jewry when he vetoed Jacobs's appointment as Principal of Jews' College and then, in 1963, refused to authorize his (re)appointment as rabbi ("minister") of London's New West End Synagogue.[9] Brodie claimed that, although Jacobs had earlier expressed unorthodox ideas, he allowed Jacobs' appointment as Tutor at Jews College as "an act of faith" (1969, 348). Brodie's "faith" in Jacobs was probably based, in part, on the fact that, as a youth, he studied in the Gateshead yeshiva, and its head, Rabbi Eliyahu Dessler,[10]extolled him as a "genius."[11] Although Jacobs did not agree with all of Dessler's hareidism, he had a warm relationship with him and spoke fondly of him throughout his life (1989, 40–59). Nevertheless, Brodie asserted, his subsequent rejection of Jacobs was caused by the latter's increasingly public expression of ideas that are "incompatible … with the most fundamental principles of Judaism" (1969, 349–350).

Jacobs eventually left the United Synagogue framework as well as Jews College and founded the New London Synagogue, which later developed Britain's Masorti Movement. He remained an observant Jew throughout his lifetime, and he frequently stressed that his radical ideas concerning revelation and halakhic development should have no impact on halakhic observance. As he put it, "the Jewish rituals are still mitzvot and serve the same purpose as prayer. They link our individual strivings to the strivings of the Jewish people towards the fullest realization of the Jewish spirit" (Jacobs 1990, 6).

However, he admitted that once the "mitzvot" are defined as human products, the probabilities of their being observed are substantially decreased. As he himself wrote, "Psychologically, it is undeniable that a clear recognition of the human development of Jewish practice and observance is bound to produce a somewhat weaker sense of allegiance to the minutiae of Jewish law" (Jacobs 2004, 53). Empirical studies of Jewish ritual observance in the United States indicate that it is not only allegiance to "the minutiae of Jewish law" that is severely weakened when they do not have religious legitimation of being divinely ordained. Sociological theory likewise recognizes the power of religious legitimation (Berger 1967, 33). It should, therefore, have been no surprise that the Chief Rabbi would not allow someone who would undermine religious allegiance to serve as a rabbi in an institution under the auspices of the Orthodox—even if nominally—rabbinate and synagogue organization.

That said, and in the light of the discussion of American Orthodoxy, one factor that may have sparked strong reaction to Jacobs's work was the terminology he used. Although he repeatedly indicated that he used the term objectively, his

constant reference to the more traditional Orthodox approach as “fundamentalism,” and those who disagreed with his conception of the halakhic process as “fundamentalists,” was taken as offensive. Jacobs’s intentions aside, the term “fundamentalist” is now widely viewed as derogatory.[12] Mark Juergensmeyer indicates several reasons for the term’s contemporary inappropriateness, among them,

the term is pejorative. It refers, as one Muslim scholar observed, to those who hold “an intolerant, self-righteous, and narrowly dogmatic religious literalism.” … The term is less descriptive than it is accusatory: it reflects our attitude toward other people more than it describes them. (1993, 2008, 4)

In addition to the specific terminology he used, Jacobs presents perspectives in a black–white/true–false manner. In some of his work he appears to argue that there is only scientific truth or “fundamentalist” falseness, and the possibility of multiple truths does not exist. This exclusivist conception of truth, coupled with his loaded terminology, may well have triggered the strong reaction.[13]

Jacobs rejected the notion that it is “only the application of the halakha which changes under changing conditions,” but “halakha itself is never determined or even influenced by environmental or sociological factors” (2000, xi). It is a notion presented by some Orthodox when confronted with the reality of change.[14] What that notion ignores/hides is a vast diversity within halakha. There are varieties of circumstances, varieties of halakhic principles, varieties of halakhic precedents, and varieties of earlier authoritative decisors with which the contemporary decisor can and must reckon. The decision of which to adopt in the contemporary situation is influenced not only by the decisor’s knowledge but by his own values. Had Jacobs framed his argument in a manner that would have remained true to the notion of halakhic development without explicitly rejecting the Heavenly authority of halakha, as did those in the United States who advocated changes but remained securely within the Orthodox orbit, perhaps his own career and the subsequent history of the British rabbinate would have been very different. On the other hand, given the growing tide of hareidization, he nonetheless might have been rejected. The Hareidi sector of Orthodoxy is growing at a higher rate than any other sector of British Jewry (Graham 2011); its leaders are as self-confident as ever and see no reason to budge from their traditional approach. Here there is a confluence between American and British Jewries. All the same, the more moderate elements of American Orthodoxy seem to have been more successful than their British counterparts at establishing rigorous and well-regarded intellectual and institutional frameworks that can

sustain their worldviews and lifestyles.

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Notes

1. Known as “the Chafetz Chaim,” he was highly revered as a model of piety and an outstanding
halakhic authority in Orthodox Ashkenazi circles.

2. In Modern Orthodox synagogues it is now increasingly acceptable for women to recite the Mourner’s Kaddish, but it is still frowned upon in most American Orthodox synagogues.

3. It should be noted that increased stringency itself can lead to a countermove toward leniency. As Yehuda Turetsky and I have indicated, there has been a “sliding toward the left” in American Orthodoxy (Turetsky and Waxman 2001). Whereas in the past, such moves resulted in breaking away from Orthodoxy, for example, the formation of Conservative Judaism in the United States and Louis Jacobs’s formation of Masorti Judaism in England following the “Jacobs Affair,” it is still unclear where such institutions and groups as Yeshivat Chovevei Torah, Yeshivat Maharat, and the International Rabbinical Fellowship, among others, are going. Perhaps contemporary American Orthodoxy is, and will continue to be, considerably broader and more flexible than its established spokespersons wish to admit.

4. Joshua Berman suggested that perhaps the parallel between the two “is not accidental; that something about the climate of German thought at the beginning of the century is what lies behind each one’s statement; the endeavor of

converting the humanities into science; the ideal of the mechanical and the efficient.” (Personal communication, Dec. 15, 2013).

5. Interestingly, Soloveitchik himself was apparently aware of this. In a letter to the President of Yeshiva University, in 1951, he wrote,

The halakhic inquiry, like any other cognitive theoretical performance, does not start out from the point of absolute zero as to sentimental attitudes and value judgments. There always exists in the mind of the researcher an ethico-axiological background against which the contours of the subject matter in question stand out more clearly. In all fields of human intellectual endeavor there is always an intuitive approach which determines the course and method of the analysis. Not even in exact sciences (particularly in their interpretive phase) is it possible to divorce the human element from the formal aspect. Hence this investigation was also undertaken in a similar subjective mood. From the very outset I was prejudiced in favor of the project of the Rabbinical Council of America and I could not imagine any halakhic authority rendering a decision against it. My inquiry consisted only in translating a vague intuitive feeling into fixed terms of halakhic discursive thinking. (Helfgot 2005, 24–25).

6. He subsequently said that such instances were the exception and limited to very specific circumstances (Soloveitchik 2013, 258–277).

7. Avraham Grossman (1992), on the other hand, argues that the sages of Ashkenaz relied on midrashic agadot in their halakhic considerations and they found agadot which not only justified but required suicide in similar situations.

8. A nineteenth-century movement among Lithuanian yeshivot that strove for ethical and spiritual self-discipline (Etkes 1993; Mirsky 2008; Brown 2014).

9. There are various and varied accounts of what came to be known as “the Jacobs affair,” and reference will be made to some of them in the analysis that follows.

10. For a hagiographic biography of Dessler, see Rosenblum (2000).

11. Dessler wrote of him,

I would not be exaggerating in the slightest if I were to say that I have never seen a genius with such depth and all the other aptitudes that he possesses, he is a truly a great scholar and it is almost impossible to fathom the depth of his knowledge. (1986, 311)

I thank my son-in-law, Noam Green, who is completing a doctorate on Dessler's thought, for bringing this reference to my attention.

12. Brodie expressed his indignation at the use of the term when he wrote, "[W]e who hold to the validity of the Torah are called backward, stagnant, mediaeval and fundamentalist" (1969, 344).

13. Terminology and demeanor may also play a significant role within halakhic development. Aviad Hollander (2010) argues that demeanor can be an important variable in the probability of a halakhic decision being accepted within the Orthodox rabbinic community.

14. Jacobs specifically referred to my claim (Waxman 1993, 223–224) that many earlier halakhic authorities would have asserted that notion. A more recent version of that notion is presented by Broyde and Wagner (2000), who argue that although results provided by halakha can change in response to changed social and/or technological conditions, there can never be any changes in the principles used by halakha.

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