Talmudic Controversies in Post-Talmudic Eyes

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The concepts of disagreement, diversity, toleration, and pluralism all belong to the experience of multiplicity and heterogeneity in social life, but while disagreement and diversity describe states, toleration and pluralism denote attitudes and normative values. This chapter will analyse various accounts of disagreement and diversity as they occurred in fact, without necessarily suggesting any normative implication, although accounts of diversity may reasonably be regarded at times as a transitional phase between the acknowledgement of disagreement as a fact of life and the adoption of toleration or pluralism as a normative world-view.

The analysis will examine the phenomenon of juristic disagreement from the perspectives of the Babylonian Talmud, Karaism, and post-talmudic Rabbinism and try to show that in each of these perspectives legal diversity was valued differently and to explain the differences in this respect between Karaites and Rabbanites and between the Talmud and post-talmudic rabbis.

**Talmud: Two Conceptions of Diversity**

The Talmud, as an interpretative commentary on the Mishnah, differs from the Mishnah in the style in which legal norms are formulated and presented. While the literary genre of the Mishnah resembles in some respects a legal code, the literary style of the Talmud reflects scholarly activity as it actually took place within the centres of rabbinic learning. These distinct styles are demonstrated also in the manner in which the disputes of the sages and their diversity of opinions on concrete legal norms are embedded in the texts.

I wish to thank Richard Claman for his comments on an earlier version of this chapter.

1 By ‘disagreement’ we refer to the situation in which disputing parties are aware of the different stances between themselves; in contrast, ‘diversity’ can be observed independently of the consciousness of the disputing parties.
Whereas the references in the Mishnah to scholarly disagreements may be explicable within the framework of the codifying project of the text,² the Talmud documents disputation without reference to their practical implementation, merely as records of academic discussion. This trait of the Talmud can be seen in the attention paid to narratives of disputes and (in general) the absence of such narratives from the Mishnah. Furthermore, against the trend in some of the Mishnah for the law to be presented as definitive and applicable, most of the legal controversies in the Talmud are presented as open-ended discussions with no practical guidelines on their applicability.

Thus there are few expressions in the Talmud of any attempt to provide practical guidelines to deal with cases in which the Talmud acknowledges more than one authorized opinion. Such guidelines as are found appear to have been added in the latest editorial layer of the Babylonian Talmud, appearing only rarely in the text and never in the Palestinian Talmud,³ a fact which in itself illustrates the marginality of any aim to provide instruction on appropriate conduct in the face of disagreement. Nonetheless, such attempts as are found provide evidence for attitudes towards unresolved disputes, which can be classified under three headings: reference to second-order considerations, recourse to extra-legal criteria, and treatment of diversity as a basis for personal liberty.

Sometimes the Talmud decides unresolved cases by reference to second-order considerations which are not directly related to the substantive component of the case in question but rather to general principles or supporting facts. In these narratives, the problem of a multiplicity of authoritative opinions is solved by reference to further standards external to the disputes themselves. One version of this method recommends adopting a restrictive policy whenever such uncertainty occurs.⁴ Another version requires preference for the opinions which are most widely held or which are most often supported in the

² Notwithstanding the majoritarian principle, the Mishnah tends to record the rejected opinions of individuals. Reflections on these occurrences within the Mishnah provide elucidation of the rationale of codification, with reference either to document-as-legitimization or to document-as-elimination: ‘And why do they record the opinion of an individual against [that of] the majority, seeing that the legal ruling should be in accordance with the opinion of the majority? [This is so] that if a court favour the view of the individual, it may depend upon him. R. Judah said: “if so, why do they put on record the view of the individual against [that of] the majority to no purpose [seemingly]?” [It is recorded so] that if a man shall say, “I hold such tradition”, another may reply to him “Thou hast [but] heard [it] as the view of so-and-so”’ (Mishnah Edu. 1: 5–6).

³ Medieval traditions already identified these formulas as post-talmudic Babylonian supplements attributed to the savora’im (see Lewin, The Savoraic Rabbis and their Talmud (Heb.), 11–13).

⁴ Such a statement appears explicitly in a post-talmudic tractate which reflects earlier traditions and dictums: ‘and wherever two tanna’im or two amora’im disputed, and we are not certain that the halakhah is according to one of them, we follow the stricter view’ (BT Sof. 13: 9). On the cultural context of its various parts, see Blank, ‘It’s Time to Take Another Look at “Our Little Sister” Soferim’.
literary discussions in the Talmud of the topic in question, a method well demonstrated in talmudic discussion of tolerable error.\footnote{See Ch. 5 n. 18 above.}

Such second-order considerations can be understood as providing a practical method for dealing with uncertainty about legal norms, although these considerations are conventions within the legal realm, where acting in accordance with a restrictive policy is a reasonable attitude in undecided situations. Likewise, whatever is general practice or most favoured in literary discussions does often indicate roughly which opinion is informally accepted by the wider community.

In other passages the Talmud treats stories of unresolved disagreement as referring to disputes which cannot be decided by any means and which are thus in fact intended to remain unresolved. Correct conduct in such cases is decided in the Talmud on extra-legal grounds, to emphasize that the equilibrium of the conflicting opinions is to be maintained. In such circumstances, the facts of the cases in question are excluded from the legal procedure, which is determined by extra-legal criteria. Among examples for the application of this method in the Talmud are passages which suggest the superiority of anyone who is more violent or anyone who has possession of a disputed object; “Now that it has not been stated what the law is [lit. neither thus nor thus], [the disputed cloths] are not to be taken away from her if she has already seized them, but if she has not yet seized them they are not to be given to her.”\footnote{BT Ket. 63b.}

This method of dealing with disagreement involves evading a decision in favour of one side or the other in the dispute, either in recognition of pre-legal standards to solve conflicts or in order to maintain the validity of both disputed opinions, so as to keep them as live options in future discussions or to protect the court from taking steps that might seem arbitrary and undermine its integrity.\footnote{For a discussion of the various explanations for proposing the ruling of ‘the one who is more violent prevails’, see David, ‘The One Who Is More Violent Prevails’.}

Very different are the talmudic passages which treat unresolved disputes positively as an opportunity to open the floor to multiple legitimate possibilities. This method is demonstrated in the dictum found as the conclusion of a number of talmudic discussions, that ‘seeing then that it has not been stated definitely that the law follows either one or the other, if one follows the one he is right and if one follows the other he is right’.\footnote{BT Ber. 27a; Shev. 48a. This ruling can be compared to the operation of \textit{ius respondendi} in Roman law as described by Gaius, which allowed jurists the liberty to choose any stance from among earlier positions: The \textit{responsum prudentium} are decisions and opinions of those who are allowed to establish the law. If the decisions of all of them converge on a point, what they thus hold obtains the force of law. If,}

\textcolor{red}{5} See Ch. 5 n. 18 above. \hspace{1cm} \textcolor{red}{6} BT Ket. 63b.
\textcolor{red}{7} For a discussion of the various explanations for proposing the ruling of ‘the one who is more violent prevails’, see David, ‘The One Who Is More Violent Prevails’.
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versions, reflecting different attitudes towards the connection between diversity and personal liberty. According to one version, unresolved disputes generate a privilege for a person to deliberately choose either of the conflicting opinions, with no further account or restrictions, while the other version imposes restrictions on this privilege and narrows down freedom of choice in such circumstances.

The version according to which conflicting opinions legitimize a plurality of opinions is well reflected in the rabbinic imagination regarding the controversies of the houses of Hillel and Shammai in Second Temple times. The Mishnah, as we have seen,\(^9\) portrays the houses of Hillel and Shammai as agreeing in some respects to accept their differences: the editor of the Mishnah presents a reciprocal tolerance between the houses, best demonstrated in the discussion in *Yevamot* 1:4. This standpoint of the Mishnah represents an attitude different from the talmudic dictum cited above, for the mishnaic description is not a normative instruction for conducting a case on which the two houses disagree, but rather a description of how both houses in fact bridged their disputes and coexisted despite their different understandings and stances.

Below, we will examine the underlying rationale that (according to the Mishnah) allowed the houses to transcend their distinct views, but, as we have seen, other rabbinic sources from late antiquity developed different accounts of the disputes of the houses, emphasizing the prevalence of the House of Hillel or an expectation that the rulings of one house or the other be followed as illustrated in the following text from the Tosefta:

The law invariably follows the opinion of the House of Hillel. He who wants to adopt for himself a more stringent ruling, to conduct himself in accord with the stringent rulings of the House of Shammai as well as in accord with the stringent rulings of the House of Hillel—concerning such a person Scripture says, ‘The fool walks in darkness’ [Eccl. 2:14]. He who holds to the lenient rulings of the House of Shammai and lenient rulings of the House of Hillel is out-and-out wicked. But it should be either in accord with the rulings of the House of Shammai, their lenient rulings and their strict rulings, or in accord with the rulings of the House of Hillel, both their lenient rulings and their stringent rulings.\(^{10}\)

however, they dissent, it is permitted for the judge to follow whichever decision he wishes. And this is made known by a rescript of *divus* Hadrian. (*Gaius*, *Institutes*, 1:7)

A comparison of the relations between the houses of Hillel and Shammai with the relations between the Proculian and Sabinian schools of Roman law might shed light on the representations of late antique legal controversies and their settings in historical and jurisprudential terms (see Leesen, *Gaius Meets Cicero*, 1–40). Some of the sources discussed here have also been dealt with in relation to the rabbis and the ‘right answer doctrine’ (see Hayes, ‘Legal Truth, Right Answers and Best Answers’; Hidary, ‘Right Answers Revisited’).

\(^{9}\) See Ch. 4 above.

\(^{10}\) *Tosefta Ede.* 2:3; *Suk.* 2:3.
Clearly, the Tosefta presents a different attitude towards the disagreements of the houses: while the Mishnah pays tribute to the manner in which both parties transcended their adherence to allow their coexistence, the Tosefta appears troubled by the possibility that such pastoral acceptance might encourage fickle conduct. Thus, the Tosefta condemns inconsistent choices and calls for a limit to the freedom of choice regarding matters on which the houses are in dispute. The importance of consistent choice is explained in the Tosefta in moral terms, as a virtuous demand. Unrestricted liberty of choice is not to be constrained because of its consequences but because of the bad faith that motivates it. Choices which are not committed to one doctrinal stance reveal the vices of dishonesty and folly; hence, the uncommitted free chooser is either a fool or a wicked person. In this respect the Tosefta expresses both acknowledgement of legal diversity and a concern that legal diversity may be misused.

A later articulation of the requirement to stay in line with the view of one or other of the parties in dispute is focused not on the immorality of inconsistent choice, but a concern for the doctrinal integrity of each stance:

Whenever you come across two tana’im and two amora’im who differ from one another in the manner of the disputes between the House of Shammai and the House of Hillel, aman should not act either in accordance with the lenient ruling of the one master and the lenient ruling of the other master, nor in accordance with the restriction of the one and the restriction of the other, but either in accordance with the lenient and restrictive ruling of the other or in accordance with the lenient and restrictive ruling of the other.

This version in the Babylonian Talmud differs from the earlier Tosefta passage in two aspects: first, freedom of choice is extended to include further juristic disputations as long as they resemble the disputes of the houses, and, second, inconsistency is not only denounced as immoral, but explicitly restricted for the sake of preserving the doctrinal integrity of both parties.

To summarize, the text of the Talmud has an essentially documentary character and thus lacks any urge to resolve juristic disputation, so that its legal discussions are quite often presented as indecisive. The frequency of scholarly disagreement in the Talmud is disguised, and no attempt is made to stress the resolution of such disagreement. Even the methods discussed above should be understood not as resolutions of disputes, but only as practical advice when faced with differences. Thus the open-ended nature of talmudic discussions

11 BT Eruv. 7a.

12 The instructional character of these methods is well demonstrated when compared to post-talmudic diachronic methods with regard to unresolved disputations such as bilkhata kehatrai (“the law is according to the later authorities”) or ein balakhab ketalmid bifnei raho (“the law is never according to the disciple when it conflicts with the rulings of the master”).
expresses, if not ab initio recognition of legal pluralism, at least post factum acknowledgement of diversity.

The disputations of the houses of Shammi and Hillel are central to the talmudic imagination of diversity, as they illustrate a way for groups in dispute to coexist. We shall see that the disputations of the two houses also captured the post-talmudic imaginations of both Karaites and Rabbanites. So far we have encountered two conceptions of diversity: one, following the mishnaic description of the houses, viewing diversity as allowing freedom to choose one norm or the other when matters are in dispute, while the other treats conflicting opinions as acceptable only as part of comprehensive doctrines, so that freedom of choice is regulated. In the post-talmudic Jewish intellectual world, much legal thought was formulated in reference to these talmudic ideas about disagreement and diversity, with the two conceptions further articulated in various ways and inspiring different reactions in the accounts of disagreement and diversity given by both Karaites and Rabbanites.

**KARAITES**

Post-talmudic reflections on the notions found in the Talmud display in general an evolutionary process in which the conceptual vocabulary of tolerance is developed. Whether the talmudic precedents of disagreement and diversity are criticized, embraced, or ignored, the reactions towards them produce a clearer framework in which toleration is identifiable. The Jewish intellectual world met two significant challenges in this period: first, the internal tensions between Karaites and Rabbanites, which affected the shaping of post-talmudic rabbinic attitudes to tradition, and, second, the surrounding Islamic culture, which affected the development of rabbinic legal perceptions of diversity, in particular through the Islamic conception of *ikhtilaf al-fuqaha*, ‘disagreement among the jurists’.

According to one *hadith*, diversity among Muslims is a kind of blessing: ‘diversity [among] my nation is mercy’ (*ikhtilaf ummati rabha*). The concept of *ikhtilaf al-fuqaha* developed from the beginning of Islamic jurisprudence in the second half of the eighth century. During the course of the ninth century, the four Sunni legal schools developed and were shaped as solidarity groups even beyond the legal realm, forming a framework for religious, social, and political life. From the tenth century on, once each school began to have its

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13 This *hadith* is cited in Yahya al-Nawawi’s commentary on *Sahih Muslim*, a book on *waqf* (Al-Nawawi, *Al-Minhaj fi Sharh Sahih Muslim ibn al-Hajaj*, 91). Its authenticity has been questioned by several scholars. Asad argues that the absence of such an idea in medieval Christian writings is not accidental, but connected to the different structures of discipline in the two religions (‘Medieval Heresy’).
own legal methodology, the concept was gradually accepted that the four great imams, the founders of the schools,\textsuperscript{14} as well as their disciples, had promulgated juridical approaches which were comprehensive, so that all that was left for their successors was the interpretation and application of their teachings. Hence arose recognition of the legitimacy of each of the four schools and the notion that it was permissible for Muslims to be divided among the four. At this stage, ‘knowledge of the divisions’ (\textit{ilm al-ikhtilaf}) served to examine the facts and the reasons for the differences among the various legal opinions and their documentation.

Against this Islamic backdrop, the lists of differences between rabbinic centres (Palestine versus Babylonia; Sura versus Pumbedita), or of the differences between Rabbanites and Karaites, composed during the Middle Ages, appear to mirror within Judaism the phenomenon of the Islamic \textit{ikhtilaf}. Of particular interest for us is a list of differences between the rabbis in Syria (Palestine) and those in Iraq (Babylonia),\textsuperscript{15} and the manner in which this list was used by Karaites scholars. This unique account, which deals with rabbinic reflections on disagreements within Judaism in the Second Temple period and later, lists about fifty differences between Palestinian and Babylonian customs. We know much more of the uses of this list by Karaites than the background of its authorship. The Karaites, as we shall see, used it to discredit the Rabbanites by presenting their tradition as riddled with contradictions and lacking any inner coherence, but it is possible that it was composed by someone within the rabbinic movement. If so, the motivation of the author is obscure: one can read the list as documentation-as-legitimization assuming that the differences were recorded for information, so as to approve and respect local custom, or as documentation-as-elimination,\textsuperscript{16} on the assumption that differences were emphasized to clarify the remoteness of those practices which are not to be approved.

Whatever the motivation of the original author, most Karait references to this list express an ambivalent criticism. On the one hand, they condemn the Rabbanites for claiming to depend on a continuous tradition and denying the occurrence of disagreement and diversity, while on the other hand, they also censure the full acceptance of diversity as reflected in the \textit{Tosefta} and in this list of differences. It appears that there were at least three distinct Karait reactions to the \textit{Tosefta}’s description of the relations between the houses and to the notion of \textit{ikhtilaf} as legitimation of diversity.

\textsuperscript{14} Abu Hanifa (699–767), Malik ibn Anas (715–95), al-Sha\'\textsuperscript{f}i (769–820), and ibn Hanibal (d. 855) (see Melchert, \textit{The Formation of the Sunni Schools of Law}).

\textsuperscript{15} Margalioth, \textit{The Differences Between Easterners and Palestinians} (Heb.).

\textsuperscript{16} Müller hesitates between the different rationales (introduction to Müller (ed.), \textit{Different Customs of Babylonians and Palestinians} (Heb.), 32–6).
One of the most prominent Karaite authors, Abu Yusuf Ya’qub al-Qirqisani (first half of the tenth century), refers to the list of the differences between the Rabbanites of Palestine and Babylonia in his account of the Jewish sects and Christianity of his time. A close reading of his account of rabbinic differences and attitudes to earlier disagreements sheds light on how the reality and ideology of diversity were perceived differently by Rabbanites and Karaites. Chapter 10 of al-Qirqisani’s account is devoted to a critical description of this list and it starts with the following comments:

The things in which they differ are about fifty in number. We have no need to mention them all, and we wish only to deal with the more important points which cause the one party to accuse the other of heresy because they differ from each other. For the differences between the two parties is no narrower that that between both of them on the one hand and the Karaites and Annaites on the other. This fact discredits their claim to represent tradition and to derive their practices from the prophets.¹⁷

Al-Qirqisani assumes that even if the list was not composed by the Rabbanites, they would not deny its accuracy. Thus, his introductory comment includes three attacks based on the meaning of the list from a Rabbanite perspective. Firstly, the Rabbanites’ claim to rely on an unbroken and trustworthy tradition traced back to the times of prophets is explicitly refuted, according to al-Qirqisani, by their acknowledgement of distinct traditions. Secondly, this undeniable difference among the Rabbanites puts into question the sectarian borderlines between them and the Karaites: since uniformity in legal practices is unobtainable even among the Rabbanites themselves, what then prevents Rabbanites from accepting the norms and scholastic opinions of Karaites? I suspect that we should understand this statement not as a call for reconciliation between Rabbanites and Karaites,¹⁸ but rather as a cynical comment ridiculing the self-perception of Rabbanites as superior carriers of original Judaism. Thirdly al-Qirqisani’s comment reveals that at least some differences even within rabbinic Judaism were evidently not acceptable to the Rabbanites and that these differences were rejected by the Rabbanites to the point that they were considered as heresy.

This third mode of attack is interesting because it portrays the Rabbanites as inclined to treat diversity as heresy, a reaction which obviously follows the rationale of documentation-as-elimination. It is not clear how far we should...

¹⁷ Al-Qirqisani, On Jewish Sects and Christianity, 140.
¹⁸ Indeed, the thirteenth-century Jewish scholar Sa’d ibn Mansur ibn Kammuna (d. 1248), in his Treatise on the Differences Between the Rabbanites and the Karaites, aims to narrow down the Rabbanite–Karaite gap by listing the differences and arguing that they are only minor.
trust al-Qirqisani’s report on this matter: it may be that al-Qirqisani, for polemical purposes, radicalizes the Rabbanite attitude towards diversity and accordingly portrays Rabbanites as much more intolerant than they were in practice; although, as we shall see below, a denial of the legitimacy of disagreement and an association of diversity with heresy did indeed emerge in the thought of at least one rabbi: Judah Halevi.

In a later passage, al-Qirqisani attacks the Rabbanite attitude towards diversity by referring to the talmudic ethos which upheld the simultaneous legitimacy of the houses:

Before describing their differences, we will mention what they say about this. [They say] that the House of Hillel and the House of Shamai differ on certain points, some of which the House of Shamai aggravates, while the House of Hillel alleviates, and on others, the House of Shamai alleviates, while the House of Hillel aggravates. The Rabbanites say that . . . one should follow consistently one of the two doctrines in its aggravations and alleviations. He who inclines in all things towards one of the two parties is praiseworthy. If their infamy were apparent nowhere else, this would be sufficient, since they claim that two different doctrines are both true and that whoever adheres to [either] one of them, pursues the right course.19

Al-Qirqisani explicitly associates the Rabbanite lists of differences with the talmudic image of the practical relations between the houses as narrated in the Tosefta. For him, the main problem in this description is epistemological: it approves a double-truth epistemology, which he deems unacceptable. The endorsement of the two houses in the Tosefta, to the point at which two conflicting stances are both accepted as truths, seems to him totally impossible. Thus al-Qirqisani accuses the rabbis of being too accepting of diversity, to an extent which seems to him to oppose the principium contradictionis.

Al-Qirqisani concludes his account with another reference to the different approaches towards differences, but on this occasion he contrasts the Rabbanite approach to that of the Karaites:

This is what I have been encouraged to mention from what I can remember of our differences; the matter is daily growing worse. It may be that some of our co-religionists will blame me for having mentioned them, since some of the Rabbanites may use them to attack us, and use them as a counter-attack to our attack on the differences between the Syrians and the Iraqis.

Trouble yourselves not over this and pay it no attention. For this accusation and the contradiction attaches to them only since they claim that all their teachings come by tradition from the Prophets. If things are so, there should be no disagreement; the fact that disagreement has arisen is a criticism of what they claim. We on the

19 Al-Qirqisani, On Jewish Sects and Christianity, 140–1.
other hand arrive at knowledge by means of our intellects, and where this is the case, it is undeniable that disagreement will arise.20

Here al-Qirqisani proposes an explanation of different approaches to disagreement and diversity by drawing a correlation between reasoning-based jurisprudence and a multiplicity of opinions. By emphasizing the dichotomy between traditionalism and rationalism he aims to explain the different approaches of Karaites and Rabbanites. From the point-of-view of reasoning-based jurisprudence, legal knowledge is dependent on intellectual capacity and effort (qiyas and ijtihad)21 so that disagreements and different opinions can naturally be expected and hence are more likely to be tolerated. By contrast, tradition-based jurisprudence presumes the independence of legal knowledge, so that disagreements can only result from disruption within the transmission process, a fact officially denied by the Rabbanites’ claim to rely on a trustful and continuous tradition.

In sum, al-Qirqisani’s critique of Rabbanite approaches to disagreement and legal diversity is twofold: on the one hand, he condemn s full acceptance of diverse opinions, as reflected in the Tosefta’s descriptions of the houses and the concept of ikhtilaf, for it leads to logical fallacy, but on the other hand, he also objects to tradition-based jurisprudence and its inclination not in any way to tolerate disagreement or diversity.22 It seems that al-Qirqisani’s stance is situated between two extremes—full affirmation of legal diversity, on the one hand, and extensive denial, on the other—so that disagreement and diversity are anticipated and therefore are to be tolerated but not to be perpetuated. In terms of the conceptual evolution of tolerance, one can identify here an idea according to which toleration might be recognized where disagreements and diverse opinions are anticipated.

In the account of rabbinic approaches to disagreement and diversity by the Karaite author Levi b. Yefet (early eleventh century), the polemical spotlight seems to focus on the differences between Rabbanites and Karaites, but in this case with a stress on different aspects of these phenomena. Levi, like al-Qirqisani, considered the talmudic ethos of the tolerance between the houses, identified with the notion of ikhtilaf, as typical of the rabbinic approach, but Levi had also read carefully the talmudic descriptions, and he had appreciated

20 Al-Qirqisani, On Jewish Sects and Christianity, 156.
21 The conceptual connection between qiyas and ijtihad is evident in the usul al-fiqh writings that blur the difference between the two terms (see Lowry, Early Islamic Legal Theory, 142–63; Zucker, ‘Fragments from Kitab Tahsir Asbari’i Asama’iyyah to Sa’adya Gaon’ (Heb.), 380 n. 27).
22 One might understand the twofold criticism as hinting at a distinction between the talmudic approach (demonstrated in the Tosefta’s description) and the traditionalist world-view of post-talmudic rabbinism.
the different nuances of the Mishnah and the Tosefta, questioning the mishnaic account and asking why the two houses kept on marrying each other despite their disagreements and what allowed both parties to rise above their principled disputes or suspend their opinions, so that they could coexist.

More than al-Qirqisani, Levi, as we shall see in the passage cited below, objects to the *ikhtilaf* as a wholehearted acceptance of diversity. *Ikhtilaf* for him is not only epistemologically incorrect but also ethically wrong. Thus Levi views with approval disagreements based on reason but disapproves of legal diversity. In other words, Levi agrees that where disagreement is anticipated it should be tolerated, but he insists that disagreement is not acceptable as the final stage of the law: a multiplicity of opinions, even if tolerable, reflects helplessness and thus should not be institutionalized or perpetuated.

Levi’s analysis derived from his desire to distinguish between the legitimacy of two different contexts in which a multiplicity of opinions is at stake. Levi starts by claiming that the standpoint found in the Tosefta, which mandates the liberty to choose between the houses, should not be regarded as optimal:

And you should know that the diversity already existed between the two houses, and at that time there was no one to reveal the truth and to eliminate the diversity. And this diversity was between the House of Shammai and the House of Hillel and it lasted long. And it is evident that there was no one [at that time] to eliminate the diversity because they permitted every individual to follow whoever he wished, as the two houses made [this possibility] conditional as it is said in the Canaanite [Jerusalem] Talmud, *Berakhot*.

Levi argues that *ikhtilaf* is not to be taken as a satisfying balance between disputing parties, but rather as regrettable, a sign of epistemological weakness. The *ikhtilaf* and the liberty to follow either of the houses are therefore reckoned legitimate only by default, through a failure to cope with uncertainties and decide in favour of the correct opinion. Thus *ikhtilaf* indicates an inability to pursue the truth, and in this respect toleration is not desirable as a value or doctrine in itself.

In a later passage, Levi sharpens the distinction in his treatment of disagreement and of diversity. Along the same lines as his correlation of disagreements with reasoning-based jurisprudence, he objects to *ikhtilaf* because it perpetuates temporary disagreements so that they become permanent:

However diversity among them was in practice, not in a [theoretical] disagreement of which they remain fellows, as the object on which the two parties disagree does not cause them to divide, and their only interest in disagreement is to reveal the truth

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through disagreement. And [through] reasoning, and bringing evidence, their connections will eventually expose and remove perplexity as their minds will come nearer rather than be divided. And this was not the pattern of the House of Shamai and the House of Hillel, but they strengthened the diversity as they told the people—‘choose whatever you wish to act in accordance with the law of either of the houses’.

In this passage two aspects of the distinction between disagreement and diversity can be seen. First, Levi suggests viewing disagreement as part of an epistemological procedure towards the revelation of the truth, so that the legitimacy of different opinions is limited and dependent only on the inquisitorial process but not beyond. Ikhtilaf in this respect produces confusion between the legitimacy of disagreement as a means and diversity as a permanent circumstance. Second, disagreement as part of a reasoning-based jurisprudence aims to promote connections rather than to perpetuate distinct understandings and practices.

In sum, Levi shares al-Qirqisani’s criticism of the ikhtilaf, viewing it as a problematic solution in epistemological terms. Levi goes a step further by sharpening the conceptual tension between disagreement and diversity. While he condemns the latter, he indicates the advantages of disagreement as an epistemological vehicle. Moreover, in addition to epistemological criticism, Levi brings to the surface the ethical, or perhaps the political, dimensions of the distinction between disagreement and diversity, noting that, in contrast to the unifying character of procedural disagreements, permanent diversity, such as the ikhtilaf, acts as a catalyst for social fragmentation.

The attack on the Rabbanites by a third Karaite, Elijah b. Abraham (twelfth century), stressed more than al-Qirqisani or Levi b. Yefet the difference between talmudic and post-talmudic approaches to disagreement and legal diversity. Like his predecessors, Elijah identifies the talmudic account of the relations between the houses with the later notion of ikhtilaf, but he does not share their denunciation of legal diversity as a permanent arrangement. For Elijah, disagreements and diverse opinions are not only anticipated and thus tolerated, but they are reckoned fully legitimate on theological grounds. Hence Elijah’s polemic against the Rabbanites focuses on the post-talmudic approaches which disown legal diversity and insist on the uniformity of the law. Elijah portrays these approaches as groundless authoritarianism, asserting that the methods used by the Rabbanites to avoid diversity are odd, arbitrary, and in contradiction to the style of the Talmud itself:

And the Rabbanites themselves narrated the deeds of the priests of the Second Temple and the Palestinian Sages, and (the disagreements) between the School of Shammasi and the School of Hillel, between Zadok and Boethus, and among the Sages themselves, this one saying thus-and-so, and that one saying otherwise. And since the time of Ashi and Ravina the teachings of the majority have been set up in one setting.

Elijah here outlines a rabbinic narrative according to which legal diversity existed from the Second Temple period to the sealing of the (Babylonian) Talmud, when diversity lapsed and a uniform law was imposed according to the rule of the majority. According to this narrative, the time of Ashi and Ravina, the last two compilers of the Babylonian Talmud, thus represented a shift from an environment of diversity to artificial uniformity which persisted to the present.

Since the Karaites’ relationship to mainstream rabbinic Judaism shaped their consciousness as an enclave group rejected and repressed by what they perceived as an erring majority, it is unsurprising that they opposed majority rule, but from Elijah’s sayings it appears that the rejection of rabbinic notions of the rule of the majority could also rest on the theoretical foundations of a general anti-authoritarian approach. Thus Elijah claimed that scepticism and fallibility are essential traits of any areas of human experience, including religion and the understanding of divine norms, making the strongest case for his anti-authoritarian view in his confession about the fallibility of the Karaites tradition itself:

To him who says: ‘But look at Anan—how many times he erred concerning the Torah! And the later authorities from amongst you did not rely upon most of what he had said. If they had it by tradition that Anan’s words flowed from those who sigh and groan, why did they not rely on all of his words?’ I would reply: ‘They did indeed rely on his words, and all that the Karaites have on hand they have received from him. But since they realized that they were not prophets and that the Holy Spirit was not with them—which would otherwise have saved them from error in all of their tradition—they did in some things display greater strictness.’

Indeed they said, ‘Presumably Anan and his generation were not sufficiently thorough in their interpretation (of Scripture), so that they fell into error in this or in that matter.’ Moreover, they said (= acknowledged) that they had forgotten some of

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25 The reference here is to the presumed forefathers of the Second Temple sects, the Sadducees and Boethusians. On rabbinic perceptions of the Boethusians, see Harari, Rabbinic Perceptions of the Boethusians.


27 This attribute is related to the description of the genuine chain of transmission based on the description of the Israelites’ suffering in Egypt according to Exod. 2: 23–4.
their tradition. See, even in the virtuous times of the Israelites they erred as it is said, ‘and if you have erred’ [Num. 15: 22] and they were also uncertain about the commandments as it is said, ‘if there shall arise a matter too hard and doubtful for thee’ [Deut. 17: 8].

In response to a Rabbanite accusation that even Karaites distrust the tradition that goes back to Anan, Elijah acknowledges the risk of erring in regard to the chain of transmission and the possibility that teachings will fall into oblivion. Moreover, he also suspects that Anan and his generation erred, and he therefore encourages his fellow-Karaites not to take their rulings for granted. This willingness to challenge the superiority of the ancestors, including the forefathers of Karaism, is a commonplace in Karaite writings, which stress the fact that respect and commitment to previous scholarship should be limited and always inferior to a dedication to the correct interpretation of the scriptures.

This advocacy of an appropriate scepticism corresponds to an acknowledgment of fallibility as an essential component in reasoning-based interpretation. In this respect, the Rabbanites are said to create a false impression when they claim to rely on a truthful and authoritative tradition. Likewise, so Elijah claims, rabbinic traditions themselves include counterexamples to an authoritarian approach:

In the same manner we see that the disagreements between the house of Shamai and the house of Hillel were caused because their interpretational [efforts] were not sufficient. And on this the Rabbanites said that on the ninth of Adar they decreed a fast day to commemorate the controversies between the house of Shamai and the house of Hillel and they regarded this event as just as grievous as the affair of the Golden Calf.

And if [the authority to decide uncertainties] was effective in the Second Temple, as these boastful [rabbis] claim, why did they not admit the same with reference to [the disagreements] between the views of the house of Shamai and those of the house of Hillel, and also between the sages of Jerusalem and the sages of Babylonia, and hold their peace (forever) after?

And [likewise] why did they not [the authorized rabbis] execute Zadok and Boethus, if [they were indeed in power] to impose the ‘four capital punishments’? And why [did the rabbis] refer to a heavenly voice [to reject the rulings of the house of Shamai in favour of those of the house of Hillel]?

According to Elijah, unresolved disagreements, a lack of executive power, and the reference to a heavenly voice all serve to contradict the authoritarian view which the rabbis claim to have held consistently. Thus Elijah not only joins his Karaite predecessors in calling for toleration of diversity, but he also strikingly

29 Ibid. 38–44. (trans. Nemo, 70).
affirms legal diversity as a natural feature of scriptural interpretation in general. In other words, Elijah acknowledges the risk of error at any historical stage and with regard to every scholar and consequently blurs the distinction between tolerating and affirming legal diversity: diversity is to be welcomed and not to be extinguished by the imposition of authority, and the Rabbanites are criticized for denying diversity and ignoring its appearances in the Talmud.

A counterexample to the Karaite condemnation of the *ikhtilaf* might have been the *ikhtilaf* of the Masoretic schools, which were themselves indeed Karaite, but here we find diversity among the Karaite accounts. Thus Levi, further on in his discussion, draws a distinction between the *ikhtilaf* in legal matters and the *ikhtilaf* in Masoretic issues, whereas Elijah finds no difference between the two areas and uses the Masoretic *ikhtilaf* to illustrate the existence of diversity even regarding the scriptural text:

Further on you should see the differences between western and eastern [schools of Masoretes] on the [text of the] Torah,30 this one says so and that one says so . . . and so many traditions, one to the western [school] and one to the eastern [school], and similarly to [the school of] Ben Asher and to [the school of] Ben Naftali . . . and many more like these. Now, if diversity appears in written [texts] that are transmitted by the prophets, it is clear *a fortiori* that other matters and doctrines not written by prophets will be corrupted and erroneous . . . .

And it will be plausible for him which is perfect in knowledge31 to deliver us a Torah that stands on two opinions32 and two views . . . . And the prophet said, ‘*Stand ye in the ways*’ [Jer. 6: 16] for the laws are compared to ways, therefore he said, ‘*Behold, I will send my messenger, and he shall prepare the way before me*’ [Mal. 3: 1] and Jeremiah said, ‘*And I will give them one heart, and one way*’ [Jer. 32: 39] to teach us that only those who will arise at the end of our exiles will bring our salvation, but you should not trust us.33

Elijah’s enthusiasm for diversity reaches the point where he provides theological grounds for it. In the homiletic fashion seen in the passage above, he suggests viewing diversity not only as an outcome of reasoning-based jurisprudence but also as entailed by the very notion of the divine law as a way

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30 This refers to the list of differences between these two schools edited in the eleventh century by Mishael ben Uzziel and titled *Kitabal-Khilaf*. It includes 867 cases of disagreement and 406 cases of agreement among these schools against other schools of Masoretes.

31 This description of God is based on Job 37: 16.

32 Based on the prophet Elijah’s criticism of worshipping both God and Baal: ‘And Elijah came unto all the people, and said, “How long halt ye between two opinions? If the Lord be God, follow him: but if Baal, then follow him”. And the people answered him not a word’ (1 Kgs 18: 21). Elijah b. Abraham therefore completely changes the original meaning of the phrase by advocating the coexistence of two contradictory practices.

or path. By stressing the image of the law as a ‘way’, he encourages further acceptance of disagreement and a multiplicity of opinions.

Elijah thus advocated that striving for legal uniformity, which he describes as a utopian ideal to be achieved only in the days to come, should be relinquished. In this respect, he represents a highly realistic approach, which could be characterized as near to a modern concept of toleration based in scepticism and an acknowledgement of fallibility as an essential aspect of human existence.

In sum, the distance between talmudic and post-talmudic attitudes towards disagreement and diversity was well observed in Karaites’ criticism of rabbinic approaches. Al-Qirqisani and Levi found the notion of *ikhtilaf* to be not only in contradiction to the rabbinic facade of a uniform tradition, but also troubling both epistemologically and ethically, whereas Elijah embraced the *ikhtilaf* and called for a continuation of the talmudic style of full acceptance of legal diversity. Furthermore, and an important lesson for the history of toleration, is the manner in which tolerance was acknowledged as *ex post facto* meritorious. The recognition of a correlation between reasoning-based jurisprudence, on the one hand, and disagreement and diversity, on the other, strengthened toleration of different opinions and understanding as a natural outcome of rationalism.

**POST-TALMUDIC RABBIS**

An emphasis on the unity of halakhah was common to much post-talmudic rabbinic Judaism, but the reasons for this emphasis varied between individuals. Authoritarianism was a central theme for post-talmudic rabbis, but they did not share a single concept of halakhic authority, and opposition to legal diversity among these rabbis was based on two completely different theoretical perceptions. One stance rejected legal diversity both as a description of rabbinic Judaism and as a normative aim, while the other acknowledged diversity as a pre-existent state but stressed the need to struggle against it. To a large extent, a continuum of reasoning leading to disagreement, then diversity, then toleration stands in the background of these perceptions.

The monumental work of Judah Halevi (1075–1141), *Al-Kitab al-Khazari*, in its earliest version was intended as an anti-Karaite work, and eventually it

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34 The metaphor of the law as the ‘right path’ is well illustrated in the Hebrew term *halakhah*, derived from the root *h-l-kh*, lit. ‘go’. Halakhah thus captures the idea of a path that the community travels together in its effort to realize God’s demands: likewise the Arabic term *shari’a*, which means ‘path’ or ‘way’.

35 Authority might be seen as epistemic, institutional (as claimed by the leaders of Babylonian academies), customary (as their Palestinian counterparts argued), traditional (as Sa’adyah Gaon stressed), based on ‘public consent’ (as Maimonides suggested), or guided by divine guarantee (as Nahmanides asserted).

36 Lobel, *Between Mysticism and Philosophy*. 
was promulgated as a theological manifesto for rabbinic Judaism. Halevi’s confrontation with Karaite thought emphasized the tension between rationalism and traditionalism, as formulated by the dichotomy between *taqlid* and *ijtihad*. For Halevi this dichotomy reflected the theological division between rabbinic Judaism, which is highly committed to the *taqlid*, and all other religions and religious approaches. Thus he identified the Rabbanite–Karaite division with the *taqlid–ijtihad* dichotomy and consequently rejected reasoning-based jurisprudence and any sceptical point of departure in religious life.

As seen in the passage below, against the well-known parable of jurists or believers as wanderers in the wilderness, Halevi offered a counter-image of the blind disciples who have the benefit of peaceful mind, as they sleep blissfully on their couches in a walled city. Hence, in his view, even resourcefulness is not of any special value, nor is laziness seen as something to be condemned. The existential conditions of a believer are calmness and felicity of the soul, rather than scepticism and fear:

The Rabbi: [The zealous efforts of the Karaites], as I have already told you, belong in the province of speculative theory. Those who speculate on the ways of glorifying God for the purpose of his worship are much more zealous than those who practise the service of God exactly as it is commanded. The latter are at ease with their tradition, and their soul is calm like one who lives in a town, and they fear not any hostile opposition. The former, however, is like a straggler in the desert, who does not know what may happen. He must provide himself with arms and prepare for battle like one expert in warfare. Be not, therefore, astonished to see them so energetic and do not lose courage if you see the followers of tradition, I mean the Rabbanites, falter. The former look for a fortress where they can entrench themselves, whilst the latter lie down on their couches in a place well fortified of old.

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37 The term *taqlid* is used in legal and theological contexts to denote imitation, blind obedience to the decisions of religious authorities and adherence to one of the traditional schools. It is commonly contrasted with *ijtihad*, a personal effort, which signifies in a legal context independent reasoning as a source of validation. The tension between *taqlid* and *ijtihad* reflects the meta-legal perplexity in the Islamic legal world before al-Shaf’i and was one of the disputed issues between Shi’ite and Sunni jurisprudence.

38 This identification was also claimed by Karaites, who denounced rabbinic attachment to tradition. In that respect, it is plausible to view Halevi’s theological project as an initial apologetic that was eventually internalized and then idealized.

39 The example commonly cited to justify legal *ijtihad* as well as the multiplicity of opinions among jurists is the dilemma of finding the direction of prayer—the *qibla*—for believers who cannot visually locate Mecca. While the obligation of facing Mecca applies to every Muslim believer with no temporal or spatial limitations, performing this duty might involve certain practical difficulties when Mecca is out of the believer’s sight. In that case, the worshipper must make a special effort (*ijtihad*) and use his own judgement in order to determine the correct direction. This metaphor concretizes the idea that, since the objective law is not always known to believers, the place at which certainty ends is the point of departure for personal independent reasoning. The image of the believers as walking in the desert is associated with the image of the theologian as a warrior defending religion and truth.

Heavily inspired by Neoplatonic ideals of harmony and unity, Halevi adopted a radical anthropology of the nature of a believer. Clearly his anthropological description was a fantasy incompatible with empirical perceptions of real rabbis, but the interesting move in Halevi’s reflections was the manner in which he transformed Neoplatonic ideals into a jurisprudence of uniformity. As a result, he denied the validity of some features which belong in any legal system:

Al-Khazari: All you say is convincing, because the law enjoins that there shall be ‘one law and one regulation’ [Num. 15:16]. Should Karaite methods prevail there would be as many different codes as opinions. Not one individual would remain constant to one code. For every day he forms new opinions, increases his knowledge, or meets with someone who refutes him with some argument and converts him to his views.

In these words, Halevi implicitly portrays rabbinic law (in contrast to Karaite law) as a sort of divine law lacking some essential aspects of any human law, since he implies that rabbinic law cannot be fully comprehended or extended or changed. Moreover, since multiplicity and mutability are taken as deficiencies of the Karaites, inconsistency and diversity are also denied in relation to rabbinic law. Halevi’s objection to the notion that rabbinic law is fully intelligible coheres well with ideals of harmony and stability. Calmness and confidence are the privileges of the true religion. Intellectual efforts therefore are not only an indication of religious falsity but also a source of heresy and damage to affiliation to true religion, since they obliterate the distinction between true religion and idolatry and are likely to legitimize paganism:

Otherwise they might draw conclusions from their own folly, try to improve upon the law and cause heterodoxy, I mean the splitting of opinions, which is the beginning of the corruption of a religion. They would soon be outside the pale of ‘one law and one regulation’. Whatever we might allow ourselves in matters of touching even repulsive things, is out of proportion to the Karaites’ schismatic views, which might cause us to find in one house ten persons with as many different opinions. Were our laws not fixed and confined by unbreakable rules, they would not be secure from the intrusion of strange elements and the loss of some component parts, because argument and taste would become guiding principles.

At this point, Halevi explicitly reveals his Neoplatonic jurisprudence, which stands in complete opposition to reasoning-based jurisprudence. For Halevi,

41 It should be noted that the original verse emphasizes the unity of the law in the sense that law and justice should be equally applied to Israelites and aliens. Therefore, the requirement of ‘one law’ is not epistemological, but rather the moral demand to treat equally insiders and outsiders.
43 Ibid. 49, my translation.
the latter is wrong not only metaphysically but also theologically, as deviation from uniformity entails heresy and threatens the integrity of religion.

Halevi’s theological jurisprudence as found in these passages fits into the continuum of reasoning leading to disagreement, then diversity, then toleration, since it treats these concepts as parts of the same totality, but he also introduces a counter-continuum, in which blind traditionalism leads to legal uniformity and thence to intolerance.

In strong contrast to Judah Halevi, Maimonides (1135–1204) was very much identified with a reasoning-based jurisprudence, a trait that aligned him with Islamic jurists and Karaites, but, with characteristic ambivalence, he was committed also to the rabbinic aspiration for legal uniformity. The argumentation for solving this tension was worked out by Maimonides in a very original way.

In the introduction to his *Commentary on the Mishnah*, Maimonides discusses the nature of the Oral Law and prophecy and provides a general account of the history of rabbinic law, its divine source, and other aspects. Elucidation of features of the Oral Law was critical for him in his argument against Karaites denial of its validity and thus the authority of the Talmud, but it is interesting to note that in making this argument he emphasized as essential the entire list of features that Halevi had denied:

When Moses—peace be upon him—died and had already transmitted to Joshua the commentaries he had received, Joshua and the people of his generation contemplated it. And every norm that he, or one of the elders, had received from Moses had nothing [to discuss] and [thus] was not subject to disagreement. And an issue which he had not heard from the prophet—peace be upon him—and which is to be discussed [regarding its branches] Joshua derived the norm by analogical reasoning, by the thirteen principles given to him at Sinai, and these are the thirteen interpretative methods.

And from the norms that they derived [by reasoning]—[there were] undisputed norms that enjoyed [general] consent, and disputed norms [the aftermath] of two [distinct] analogies . . . because it is typical to dialectical reasoning. And when such disagreement occurred, they followed the majority as the Lord said: ‘after multitude to predispose’ [Exod. 23:2].

And you should know that prophecy is not effective in investigating and commenting on the Torah and in deriving branches [new norms] by the thirteen principles [of inference], but whatever Joshua and Pinchas [the disciples of Moses] can infer in matters of investigation and analogy, Ravina and Ashi can do.44

As a distinct rationalist, like the Karaites and against the usual Rabbanite view, Maimonides argued against the superiority of earlier figures and master—

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44 Maimonides, *Commentary on the Mishnah*, introduction.
disciple hierarchical relations, asserting that so long as legal reasoning played a central role in extending the scope of law, previous generations of sages enjoy no superior authority over later scholars. Maimonides’s integration of revelation as a source of the law with consensus (ijma’) and reasoning (qiyas and ijtihad) situated him very close to Sunni jurisprudence, but Maimonides did not proceed further along Sunni lines to approve also the ikhtilaf, instead he raised the need to achieve uniformity in the light of the anticipated problem of diversity.

The appearance as the final stage in the passage cited above of the principle that the view of the majority should be followed is unexpected, since it seems to suspend the process of reasoning-based jurisprudence and to disengage from the legal content of the case in dispute in favour of an institutional criterion. The explanation for this leap may lie in Maimonides’s universal theory about the necessity of law in every human society:

Because of the manifold composition of this species [human being] . . . there are many differences between the individuals belonging to it, so that you can hardly find two individuals who are in any accord with respect to one of the species of moral habits. . . . Nothing like this great difference between the various individuals is found among the other species of animals, in which the difference between individuals belonging to the same species is small, man being in this respect an exception. For you may find among us two individuals who seem, with regard to every moral habit, to belong to two different species. Thus you may find in an individual cruelty that reaches a point at which he kills the youngest of his sons in his great anger, whereas another individual is full of pity at the killing of a bug or any other insect, his soul being too tender for this. . . .

Now as the nature of the human species requires that there be those differences among the individuals belonging to it and as in addition society is a necessity for its nature, it is by no means possible that his society should be perfected except—and this is necessarily so—through a ruler who gauges the actions of the individuals, perfecting that which is deficient and reducing that which is excessive and who prescribes actions and moral habits that all of them must always practise in the same way, so that the natural diversity is hidden through the multiple points of conventional accord and so that the community becomes well ordered. Therefore, I say that the law, although it is not natural, enters into what is natural. It is a part of the wisdom of the deity with regard to the permanence of this species of which He has willed the existence, that He put it into its nature that individuals belonging to it should have the faculty of ruling.45

In this passage Maimonides refers to the nature–law question as it stands at the heart of the formation of political life. The nature–law question in this context is perceived as an outcome of two naturalist assumptions—the Aristotelian

assumption that humanity is political by nature and the assumption that human diversity, in terms of character and behaviour, is a natural necessity.

Maimonides is not concerned with detailed methods of organizing societies but rather with the political necessity of eliminating aspects of the natural diversity of human beings. The success of a society, according to him, depends on leadership which rules the people in a way that blurs their natural uniqueness and aspires to make them uniform. Thus all law, not only divine law, is a response to the natural diversity of the human species and a natural reaction to natural heterogeneity.

Legal uniformity according to Maimonides is thus not peculiar to rabbinic law, but a general feature at the base of the whole concept of law. The aim of every law, including religious law, is to struggle with the natural disposition towards the diversity which is a unique trait of human beings and which law tries to expunge in order to render human conduct more uniform. Maimonides clearly departs in this instance from a jurisprudence based on reason and elevateds political concerns above epistemological commitment. The search for legal uniformity by Maimonides is driven not only by theology but by political pragmatism.

CONCLUSION

This analysis of Jewish reflections on disagreement and legal diversity exposes traces of pre-modern conceptions of tolerance; but, in comparison with modern western notions of tolerance, which are basically derived from European political and religious experience, the attitudes we have found in late-antique and early medieval Jewish texts are mainly products of discursive and interpretative activity by religious thinkers, both Rabbanite and Karaita. While tolerance in modern societies is treated as a moral or political value, in the context of late-antique and medieval Judaism tolerance appears as a deliberative value, emerging as an offshoot of a scholastic culture. The Talmud and earlier rabbinic sources had already provided patterns for understanding tolerance when they described disagreements between the sages and appropriate conduct in the face of unresolved disputations; but, while post-talmudic Jewish approaches presupposed the notion of deliberative tolerance, they differed on the appropriate policy that should be taken towards diversity. Our examination has revealed that while the Rabbanites inclined towards legal uniformity, their Karaita counterparts denied any need for uniformity and were mainly concerned to establish a balance between acknowledged variety, on the one hand, and a fear of enabling and encouraging the permanent establishment of diversity, on the other.