***Ze'ev Safrai and Avi Saguy, Eds.***
**Between Authority and Autonomy**
**In Jewish Tradition**
*United Kibbutz Press, 1997.*
*511 pages, Hebrew.*

***Reviewed by Yosef Yitzhak Lifshitz***

In the course of his journey to himself, modern man cast off many of his ancient burdens, and above all he cast off religion. Having found in reason sufficient proof of his own worth, modern man no longer felt the need for the yoke of God. His reality now comes from within himself, from his own thinking. Modern thought unites all human perspectives into a single gaze at the individual and his world: Art has become increasingly impressionistic, self-conscious and free-form. Political thought as well, liberated from its dependence upon sovereign authority, has produced an abundance of checks and balances which aim to neutralize all power, and to place the affairs of state in the hands of professionals rather than figures of authority. Even religions have changed, turning their focus upon the individual—as, for instance, the Lutheran renunciation of the Holy See. Authority, it seems, has become the sworn enemy of the individual.

*Between Authority and Autonomy in Jewish Tradition*, a collection of essays edited by Ze'ev Safrai and Avi Saguy, tries to address the problem from a Jewish religious perspective. Yet to a large degree, the book mirrors the same modern denigration of authority, and anyone seeking a serious discussion of Jewish theology will be disappointed. While the book's stated goal is to trace the source of authority in Jewish law, most of the essays toe a modern individualistic line, down-playing the role of externally imposed authority, trumpeting man's individuality with respect to his duties, and inflating the importance of "voluntary" authority, that which man undertakes out of his own free will.

The most important essays in *Between Authority and Autonomy* are the editors' own, the other entries being, for the most part, variations on a theme. Safrai and Saguy place the halachic authority stemming from the individual on a par with any external source. In the authors' jointly written introduction, for example, the three classic sources for the obligation to obey halacha—divine revelation, rabbinic authority and popular consent—are weighed against the authority deriving from one's own efforts and achievements. Only by mastering the law, they explain, can the individual earn the authority to render halachic decisions, and only through his judgment of other scholars can the

individual choose whom to recognize as a halachic authority. Authority is dialectical: The individual "empowers" his own authorities, while the public or God imposes the authority of the halachic scholar upon the individual. What is important for our purposes is not the dialectic itself, but the high status it accords the individual in defining halachic authority, a status unprecedented in Orthodox thought.

This idea is further developed in Avi Saguy's essay, "Halacha, Judgment, Responsibility and Religious Zionism." Saguy makes use of the concepts of *regulative* and *constitutive* legal systems, developed by J.R. Searle and John Rawls, in relating to halacha. A regulative legal system aims to further a higher set of goals, which are prior to the system and in no way contingent upon it. For instance, the purpose of traffic law is to direct the flow of vehicles on the roads safely and efficiently; traffic laws are therefore written and interpreted in light of this purpose. Because regulative legal systems are always a means to an end, they may be compared with one another—traffic laws in the United States, for example, might be compared with those of Australia in order to apply the successes of the Australian system in America.

Constitutive legal systems, on the other hand, reflect no larger purpose; rather, the legal system itself *creates* the realm of its activity. One example is the rules of children's games: A game comes into being only once its rules have been defined; when the rules change, the game itself has, essentially, been replaced by a different one. Given that every constitutive legal system creates its own, unique realm of activity, there is no room for comparison between one constitutive legal system and another.

In Saguy's opinion, the question of whether halacha is regulative or constitutive is what separates the thought of contemporary Jewish philosophers Joseph B. Soloveitchik and Yeshayahu Leibowitz, who see it as fundamentally constitutive, from that of most other halachic thinkers—including, evidently, Saguy himself—who see Jewish law as a means to a higher set of ends. Rather than imposing its principles or values upon us, Saguy contends, the halacha is meant to offer direction in achieving other, externally determined ends.

But what ends? In a regulative system, proper decisionmaking requires a grasp of those higher goals toward which the laws are aimed. How does the *posek* (halachic decisor) determine what the goals driving Jewish law are? Saguy cites a number of sources, including the rabbinic traditions and the

text of the Tora itself. Above all these, however, Saguy places the judgment of the individual *posek*:

> There exists a context of values external to the halacha which guides the *posek*.... As a normative system, the halacha draws upon a very broad extra-halachic value system: Societal values, sensitivity to human need and, above all, moral values. The force of these values does not derive from their being the product of halacha itself. Ethical and societal values are not the product of texts or institutional authority. On the contrary, the *posek* reads the text in light of these values, and through them determines the status of figures of authority.

The *posek*, claims Saguy, arrives at a halachic conclusion based on the sources at his disposal, whether halachic or extra-halachic. As an inevitable result, "the final halachic ruling mirrors the beliefs and values of the halachic sage.... It is not the book which decides, but the *posek* and his values." In support, Saguy quotes Zvi Ashkenazi, the eighteenth-century rabbinic scholar from Amsterdam better known as the Hacham Zvi, to the effect that "one is forbidden to teach until he is capable of deleting an entry of the *Shulhan Aruch*." Here Saguy is continuing along the line of thought presented in the introductory essay, which places the individual at the center of halachic authority, and asserts that halachic judgment means relying upon extra-halachic values, originating in the judge's own beliefs, or in those of society.

Such a belief is convenient indeed. The Jew need no longer concern himself that the study of Tora might impose upon him values not to his liking. Keep the commandments, Saguy is basically saying, and impose your values on them, for values can have many sources aside from the Tora itself. Be a universalist at home, and wear a black hat and *tzitzit* when you go out. Like the book's introduction, this essay suffers from a fundamental dualism. Sources both within the halacha and outside it are as clay in the hands of the individual halachic potter. Yet by which values is the law to be decided? To this, Saguy and Safrai offer no answer.

The problem with turning the individual's values into a regulative basis for halacha is that it negates the classic Jewish idea of how to serve God. This approach is articulated in countless halachic and philosophical writings across the ages, and is best described as the tension between love and awe. Love of God is faith without any sense of God's authority; it springs from the individual soul, propelling him forward, in search of a divine embrace. Awe, on the other hand, is *all* authority; it is the demurral, the overwhelming shudder at the glory and majesty of

God. Authority is a central part of man's relationship with God, expressed in the covenant which signifies acceptance of the yoke—that is, the authority—of the Kingdom of Heaven.

The tension between awe and love is the essential dynamic of the believing Jew. Love without awe is one-directional, lacking in dialogue. If the individual is the source for all religious impulse, then nothing stands in his way when he begins to look for alternative objects for his faith. This, of course, is the path to idolatry, or at least atheism. Subjugating religious authority to the values of the individual, as suggested by Saguy, does not differ essentially from subordinating the halacha to love—and ridding religion of its sense of awe, without which faith cannot stand.

Saguy is right in presenting halacha as a regulative system, focusing upon the judgment of the *posek* in light of a higher set of values. But his approach ignores both the question of what those values ought to be, and, more importantly, the answer which the halacha itself has always provided: That halacha is the practical realization of the values of the Tora itself, and as such expresses the tension between love and awe of God. It has two aspects. One is God's demands for a standard of human behavior, as expressed in the Written Law—a system which, we are taught, was imposed upon the Jewish people by force—which transmits the values and ideas directing the halacha. The other is man's response to God, as expressed in the Oral Law—an eminently human endeavor—which is man's attempt to approach his Creator, walk in his ways and internalize his principles. Halacha lies at the crossroads between these two worlds, between awe and love, between the words of God and the words of man, between the Written Tora and the Oral Tora.

The text is not self-explanatory. It does require human interpretation. But man does not impose his system of "extra-halachic" values upon it, for this approach ultimately transforms the halacha into another semi-arbitrary legal system, molded at every turn by opinions and values of indeterminate origin, untouched by any ideal emanating from the Tora itself. Rather, man must bring the text to bear upon his own values, and be willing to change himself as a result of the encounter. The task of the *posek* is therefore both creative and responsible, stemming from the attempt to understand and internalize the Tora's ideals, and to apply them to a changing world. Such a halacha is not dualistic, but unified—the product of the *posek*'s unique creative encounter with the Tora.

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