



2020

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Moshe Sokol

Lander College for Men of the Touro College and University System

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Recommended Citation

Sokol, Moshe (2020) "Portrait of a Rabbinic Dissident: Akavya Ben Mehalalel Confronts the Judicial Establishment," *Touro Law Review*: Vol. 36: No. 1, Article 17.

Available at: <https://digitalcommons.tourolaw.edu/lawreview/vol36/iss1/17>

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PORTRAIT OF A RABBINIC DISSIDENT: AKAVYA BEN MEHALALEL CONFRONTS THE JUDICIAL ESTABLISHMENT

*Moshe Sokol**

I. INTRODUCTION

Akavya ben Mehalalel is the first-century protagonist in the narrative, which is the subject of this study. Akavya ben Mehalalel dissented from the majority on a matter of Jewish law and painfully suffered the consequences of that dissent.¹ What was his jurisprudence? What motivated him? What exactly was his fate? Did he change his views throughout his lifetime? What deathbed advice did he offer his son? These questions are taken up in a passage from the fifth chapter of *Mishna Eduyot*, a compilation of teachings on a variety of subjects composed in Yavneh, shortly after the destruction of the Second Temple.

As it happens, we possess very few teachings of Akavya, primarily those included in this *mishna*. The second teaching of a non-legal nature is recorded in another *mishna*, in *Pirkei Avot*:

Akavya ben Mehalalel said: Reflect on three things and you will avoid transgression: Know where you came from, where you are going, and before whom you will have to give and account and reckoning. Where you came from? From a putrid drop. Where you are going? To a place of dust, worms, and maggots. And before whom you will have to give an account and reckoning?

*Moshe Sokol is Professor of Philosophy and Jewish Studies, and Dean of the Lander College for Men of the Touro College and University System.

¹ See C. Licht, *Tradition and Innovation: Topics in Rabbinic Literature*, GIVAT HAVIVA, 47-52 (1989) (Hebrew) (summarizing the scholarly positions on exactly when Akavya lived and for a general discussion of this text).

Before the Supreme King of Kings, the Holy One,
Blessed be He.²

This crucial message appears to have served as the guidepost for Akavya's own tragic life, as we shall see. The text which we shall analyze appears below:

6. Akavya ben Mahalalel testified concerning four things. They said to him: Akavya, retract these four things which you say, and we will make you the head of the court in Israel. He said to them: it is better for me to be called a fool all my days than that I should become [even] for one hour a wicked man before God; So they shouldn't say: "he withdrew his opinions for the sake of power." He used to pronounce impure the hair which has been left over [in leprosy], And green (yellow) blood (of vaginal discharge); But the Sages declared them clean. He used to permit the wool of a first-born animal which was blemished and which had fallen out and had been put in a niche, the first-born being slaughtered afterwards; But the sages forbid it. He used to say: a woman proselyte and a freed slave-woman are not made to drink of the bitter waters. But the Sages say: they are made to drink. They said to him: it happened in the case of Karkemith, a freed slave-woman who was in Jerusalem, that Shemaiah and Avtalion made her drink. He said to them: they made her drink an example (and not the real water). Whereupon they excommunicated him; and he died while he was under excommunication, and the court stoned his coffin. Rabbi Judah said: God forbid [that one should say] that Akavya was excommunicated; for the courtyard is never locked for any man in Israel who was equal to Avavia ben Mahalalel in wisdom and the fear of sin. But whom did they excommunicate? Eliezer the son of Hanoch who cast doubt against the laws concerning the purifying of the hands. And when he died the court sent and laid a stone on his coffin. This

² *Pirkei Avot* 3:1.

teaches that whoever is excommunicated and dies while under excommunication, his coffin is stoned

7. At the time of his death he said to his son, “Retract the four opinions which I used to declare.” He (the said to him, “Why did not you retract them?” He said to him, “I heard them from the mouth of the many, and they heard [the contrary] from the mouth of the many. I stood fast by the tradition which I heard, and they stood fast by the tradition which they heard. But you have heard [my tradition] from the mouth of a single individual and [their tradition] from the mouth of the many. It is better to leave the opinion of the single individual and to hold by the opinion of the many.” He said to him, “Father commend me to your colleagues.” He said to him, “I will not commend you.” He said to him, “Have you found in me any wrong?” He said, “No; your own deeds will cause you to be near, and your own actions will distance you.”³

Our narrative starts by reporting that Akavya attested to four laws. The rabbis responded with an offer: If you retract these four testimonies, we will appoint you *av bet din*, head of the supreme rabbinical court, a position second only to the *nasi*, the leader of the Jewish community and court. It would appear that the rabbis, in effect, wished to bribe him into abandoning his position by promises of great rabbinic prominence. Surely that is unexpected, to say the very least.

Akavya’s response to their offer is tart indeed. He asserts that he would rather be called a fool his entire life, for rejecting the gain of high office, than be evil before God just for a moment. He then adds that he does not want people to say of him that because of personal gain, he retracted his position. For our purposes here, let us focus on the first point, that Jewish legal truth and personal conscience may never be sacrificed. Even if people think of him as a fool for abandoning great personal gain, those considerations are irrelevant. As Akavya taught in *Pirkei Avot*, nothing matters, but God’s righteous judgment. The values of social status, wealth, and prestige, which the rabbis offer, are no more than byproducts of the physical dimension to

³ *Mishnah Eduyot 6*, SEFARIA, *Mishnah Eduyot 5:6-7*, https://www.sefaria.org/Mishnah_Eduyot.5.7?lang=bi&with=all&lang2=en (last visited Apr. 6, 2020).

the human condition, which ends in burial and decay, for which reason they are not values at all. The only enduring dimension of the human being, the only dimension which possesses absolute value, is that which adheres to God and to the truths of His Torah. He and the rabbis speak different languages and profess incommensurate values. What they value and seek to bribe him with is simply of no value at all to Akavya himself. Thus, Akavya's teaching in *Pirkei Avot* illuminates his response to the rabbis' offer.

That said, how are we to understand the offer of the rabbis? How could they even attempt to bribe a person by offering him high office, especially a man with such deep and uncompromising principles? While we cannot say for sure, as the text does not explain itself, I would conjecture that the rabbis meant to say this:

You, Akavya, take an isolated position against the majority view. We understand and respect your convictions. However, true human greatness does not lie in isolation. It has been said that humans are by their very nature political animals, that we live and function only within society. You must recognize the essential social context of the human condition. You are a great scholar, and the social context within which you live is the community of scholars. If you accept that reality and choose to conform to its standards, then because of your knowledge, deep principles, and gifts, we will make you its leader.

On this account, the offer was not so much a bribe, as it was a means to foster within him the social consciousness which would make his ascension to high office deserved.

The *mishna* next proceeds to identify the four points of law in which Akavya opposed the majority. Only one is germane to our analysis. During Temple times, a woman accused of an adulterous relationship by her husband, under certain well-defined *halakhic* circumstances, becomes a *sotah*, and according to biblical law, must drink "*mei sotah*," special waters which are probative of her guilt or innocence. The question at hand is whether or not these laws apply to a female convert⁴ as well, or only to a woman born Jewish. Akavya took the view that they do not apply, while the Sages maintained that

⁴ Or a female gentile slave who when freed becomes Jewish.

they did. In support of their position, the Sages recount a tradition according to which during Temple times Shemaya and Avtalyon, the two heads of the Sanhedrin then, required a female convert by the name of Karkamis to drink *mei sotah*. This demonstrates that the Sages were correct. Akavya responded, somewhat enigmatically, that “they made her drink by example.” His response, asserts the *mishna*, led the Sages to excommunicate him, and according to this tradition, he died excommunicated whereupon the court stoned his coffin.

Before we examine the meaning of Akavya’s response and the very harsh response it evoked, it is first important to observe that the debate at hand could not be resolved on the basis of *halakhic* argument, which is how *halakhic* differences are typically adjudicated. This is because the debate between Akavya and the Sages was a debate about which oral tradition was correct. As will be evident later, Akavya maintained that he possessed an impeccably reliable tradition. Mainly, that the majority position amongst the ancient Sages was that a convert could not drink *mei sotah*, while the Sages maintained with equal certainty that they had an impeccably reliable tradition that a convert would drink *mei sotah*. The debate was only over whose testimony about the tradition was correct. In other words, the debate was about a matter of fact—the principle empirically verifiable reliability of oral transmission—rather than a matter of value—what the *halakha* by virtue of its own inner logic should require. Therefore, the proof the Sages offer is an empirical one, attesting to the reliability of their tradition by appeal to the historical practice of two great authorities, rather than a *halakhic* one *per se*. It is worth noting that this provides an explanation for why Akavya, who lived during Temple times, was not accused of being a rebellious elder, a member of the Sanhedrin who refuses to submit to the majority, a cardinal crime punishable by death. According to one account in the Talmud, the law of rebellious elder applies only when the majority grounds its position in an oral tradition, while the dissident scholar grounds his position in autonomous human reasoning. This Akavya did not do, since both he and the Sages based their positions on oral traditions.⁵

Interestingly, Akavya does not cast doubt upon the reliability of the Sages’ tradition regarding the practice of Shmaya and Avtalion.

⁵ See TB Sanhedrin 88a. The Talmud there offers a second explanation, that Akavya never issued a formal *halakhic* decision on the basis of his tradition, so there was no schism in practice.

He concedes the facts, yet casts doubt on the utility of that precedent for adjudicating the law.

How does he do so? By asserting that Shemaya and Avtalyon “made her drink by example.” What is the meaning of this somewhat obscure phrase? The classical commentators offer two fairly similar interpretations.⁶ The one I shall focus on here turns on the personal status of Shemaya and Avtalyon themselves, for according to various rabbinic sources, they were converts.⁷ As such, Akavya argued, they had a vested interest in regularizing the status of converts, for which reason they treated Karkamis the female convert like any other Jewish woman, and they required that she drink *mei sotah*. In effect, Akavya was arguing that Shemaya’s and Avtalyon’s position was tainted by personal interest, and their practice could not serve as a legal precedent.⁸

According to this interpretation, it is not difficult to see why the Sages excommunicated Akavya. First, his curt and acerbic comment cast aspersions on the integrity of the greatest scholars of their generation, heads of the Sanhedrin, and pivotal vehicles for the transmission of the Oral Law to future generations.⁹ He suspected them of distorting *halakhic* truth to serve their own personal interests. Second, such claims undermine the whole of the *halakhic* system, for if the motives of even the greatest scholars can be suspect, then the *halakhic* decisions of all scholars may be suspect as well. To draw upon a contemporary example, this would be like arguing that a Hispanic US judge must recuse himself from sitting on a case in which the defendant is Hispanic as well. If this is what Akavya meant, it would be a shocking accusation, outside the pale of standard *halakhic* discourse. Indeed, it seems fair to ask how he could even make that claim.

By way of sharpening this question, consider the position of R. Yehuda, cited next in the *mishna*. R. Yehuda could simply not accept that a man of Akavya’s stature was excommunicated. “God forbid,” he proclaimed, “that Akavya was excommunicated! For the Temple courtyard is never locked for any man of Israel who has the wisdom and fear of sin like Akavya ben Mehalalel.” The reference here is to Passover Eve, when the Temple courtyard was jam-packed with

⁶ See Ra’avad, Rambam and R. Ovadia M’Bartenura (Ra’av) ad. loc.

⁷ See TB Gittin 57b and TB Sanhedrin 96b, among other sources.

⁸ On this interpretation, they themselves are the example in question.

⁹ See *Pirkei Avot* 1:1.

worshippers sacrificing their Passover lambs. Despite the massive crowds, no one exceeded Akavya in wisdom and fear of God. R. Yehuda maintained that it was simply unthinkable that Akavya might have been excommunicated, and the oral tradition must have confused Akavya with another scholar. Akavya, in his view, was unimpeachable.

Now, this perspective sharpens one question while answering another. It sharpens the question of how Akavya could have made the comments he did, given his extraordinary stature. However, it helps answer another. Why were the Sages so disturbed about Akavya's dissent that they felt compelled to offer him the post of *av beth din* (head of the court) if he retracted his positions? The answer may well be that precisely because of Akavya's stature, his dissent was all the more dangerous. If an average scholar were to dissent, it would not threaten the viability of the system for *halakhic* (Jewish legal) adjudication. However, dissent by a man of Akavya's stature could lead to a schism in the community, whose consequences might be its irreparable splintering. The Sages sought to avoid this at all costs.

But given Akavya's stature, why then did he cast aspersions on the great Shemaya and Avtalyon? Part of the answer, I would suggest, lies exactly in the praise R. Yehuda offered: Akavya feared sin. His teaching recorded in *Pirkei Avot* stressed the same theme: All that matters in life is how one stands before God in judgment. Akavya lived every moment in the presence of God and in fear of His judgment. He could tolerate not a whiff of deviation from that exacting standard, not in himself, and not in anyone else, no matter their stature. Consequent upon this sensibility was no doubt the accurate view that not everyone could live up to these standards, and this may have bred a certain skepticism. People are not what they may seem to be, for do even people of stature live by the eternally present fear of sin? How many people can? Yet many people nevertheless achieve high office. Do they really deserve high office? Hardly, by the elevated standards of Akavya. In that respect, all are failures, the question being only to what extent.

This sensibility may have led Akavya to suspect the worst, not because Shemaya and Avtalyon were especially flawed. They were not; indeed they were great men. But they were men nonetheless, who could never live up to the uncompromising standards of Akavya. Akavya would have suspected the motives of anyone, irrespective of stature, for all motives on the part of people who do not live in exacting

fear of God's judgment are mixed. Whose choices reflect no element, even slight, of self-interest? Only those who live in the unremitting presence of God. Those who do not are likely to suffer from a mixture of motives, some altruistic, some self-serving, which undermines their intellectual integrity. Shemaya and Avtalyon may well have been men of great stature, but they could not meet Akavya's relentlessly high standards, and so for him, their motives must have been mixed.

However, we might still ask why a suspicion alone would render their decision invalid. Surely Shmaya's and Avtalyon's reputations were outstanding, and that should have been enough, suspicions notwithstanding. I would suggest, therefore, that a second factor was at play as well. Akavya possessed an unshakeable commitment to the truth as he saw it. Any *halakhic* decision, which may have been motivated even only slightly by factors unrelated to *halakhic* truth, rendered the decision unreliable, and therefore, *halakhically* illegitimate. Thus, there were two factors at play, first, Akavya's exacting standards for personal intellectual integrity, and second, his exacting standards for the processes of *halakhic* decision-making. Taken together, they led Akavya to reject as legal precedent Shamaya's and Avtalyon's practice with regard to Karkamis the convert.

We now have an even clearer explanation for why the Sages feared Akavya's dissent. Akavya was such a religious giant that his dissent really could lead to a schism. Unfortunately, Jewish history has borne out such fears. Charismatic figures over the millennia have fractured the Jewish people, from ancient through medieval into modern times. On this reading, the Sages were right to fear Akavya's dissent.

II. PART TWO: AKAVYA'S DEATHBED ADVICE TO HIS SON

Time passes, although we don't know how long, and we next meet up with Akavya on his deathbed, in a final conversation with his son. Interestingly, his son remains anonymous. We do not know his name or anything about him, but for this dialogue: He remains lost to the rabbinic tradition, much like the teachings of his father.

In reading this passage, we must ask ourselves whether or not Akavya has changed in any way over the years, and whether or not he

has softened his views. What advice can a great, if ostracized, dissident offer his son as he leaves the world?

“My son,” Akavya says, “retract the four teachings I used to say.” Now upon reflection, this is astonishing indeed. Akavya sacrificed his whole social life and religious stature because he was convinced that his oral tradition was correct. If one follows the first view recorded in the *Mishnah*, not R. Yehuda’s, Akavya spent the remainder of his life excommunicated, after having rejected an offer for one of the highest positions in the land, all because of his uncompromising commitment to the truth. How then could he advise his son to abandon those very *halakhic* positions for which he had sacrificed so much?

His own son asks him a similar question: “If you want me to abandon those positions, why then didn’t *you*?” There is only one *halakhic* truth: Either you were right, or you were wrong. If you were right, then I cannot abandon your position, and if you were wrong, then why didn’t you abandon your position yourself?

Akavya’s response is a fascinating one and turns on a distinction between legal formalism and legal truth.¹⁰ While there may (or may not) be an objective legal truth regarding the status of these disputed cases, legal practice is always determined by following the formal processes for adjudicating disputes. One of the cardinal principles for such adjudication is adherence to the majority. Thus, Akavya meant to say to his son: I am in possession of an impeccably reliable tradition, which I myself heard from a majority of scholars, that the majority took the position I did. Although my colleagues maintain that they are in possession of an equally reliable tradition that the majority sided with their position, I cannot abandon my oral tradition for theirs, because I myself heard it from a majority. Thus, the formal processes for the adjudication of *halakha* do not permit me to abandon my position.

“However,” Akavya continued: [Y]our position is quite different. You heard my oral tradition from me, and you heard the Sages’ oral tradition from them. I am a lone advocate of my tradition, while they are not. Therefore, the formal procedure of majority rule requires you to abandon my position, while at the same time requiring me to sustain it.

¹⁰ Some might use the similar although not identical categories of legal positivism versus legal realism.

We should note here that there is a curious and tragic consequence to the recommendation Akavya makes to his son, which is that he condemns his own *halakhic* position to extinction. The very laws for which he staked his life will be lost to future generations since his son will follow his advice and not adopt his father's view, and therefore no one else will either. From this perspective, Akavya's recommendation is altogether remarkable. For one thing, it demonstrates his ability to live by the distinction between *halakhic* truth and *halakhic* process. He had the capacity to fully integrate the conviction that if the *halakhic* process is a good one, then God's will has been fulfilled, irrespective of *halakhic* truth. If his son follows a healthy *halakhic* process and conforms to the majority, then God's will has been done, even if it runs contrary to Akavya's own conviction about what is correct. Now it is one thing to understand this distinction, but it is altogether different from internalizing and living by it fully. This is especially true when living by it means the extinction of the very *halakhic* positions for which one has sacrificed so much. How did Akavya manage this almost superhuman feat? I believe it flows from his experience of God articulated in *Pirkei Avot*. All that matters in life is standing before God righteously. Now, if God wills that the *halakhic* process follows the majority, and his son follows the majority, then all is right with God, and Akavya wants no more out of life than that. He had the capacity to dissociate himself from his own personal needs completely, and the feelings he might have had when advising his son because these needs simply didn't matter to him. All that did matter was standing righteously before God in His judgment.

The concluding dialogue in the *mishnah* further sharpens this perspective on Akavya. His son finally asks Akavya to commend him to his colleagues. If the father was banned, no doubt the son, too, suffered the social consequences of the father's ostracism. There is, therefore, considerable pathos to his request for help in easing his way back into the fellowship of scholars. Akavya responds, in his usual curt style, that he cannot. His son then asks him why. Is he unworthy in some way? In his very last words recorded before dying, Akavya responds: "No [you are not unworthy]. Your own actions will draw you near or your own actions will distance you."

At one level, this is the advice of the old Akavya. Letters of recommendation will do you no good, he tells his son. Your own knowledge of Torah, your integrity, your commitment to the truth, will

determine your standing in the community of scholars. In the language of *Pirkei Avot*, Akavya meant to say to his son that your standing is shaped by your commitment to living a life of righteousness before the judgment of God. Each individual creates his or her own destiny by the way he or she lives, and by the critical choices made, for there is no escaping individual responsibility in shaping a life. Akavya meant to say that this conviction, powerfully articulated in *Pirkei Avot*, guided his own life, and must guide his son's life as well. While his son must abandon Akavya's *halachot*, he must never abandon the principles that made Akavya the man he was. Those were Akavya's very last words.

Yet it is difficult to avoid hearing in these final words another message as well. For if Akavya taught his son a powerful message about life, would that very message not apply to his own life as well? The words "draw you near" and "distance you" are telling indeed, for Akavya himself was first near the fellowship of scholars, and then distanced from them, all because of his words and actions. If Akavya were to apply to himself the advice he gives to his son, then Akavya here takes responsibility for the critical choices he made in his own life. Does he regret any of those choices? We have no evidence that he does, and given the portrait we have drawn of him, it seems unlikely he would. That said, we do find a softening, a stress, on the importance of following the majority for his son, and of thereby re-entering the community of Torah scholars. After all, Akavya had learned from bitter personal experience just how painful that ostracism can be. Moreover, we must distinguish between his refusal to retract his *halakhic* positions, and the acerbic comments he made about Shemaya and Avtalyon. While I find it unimaginable that he would regret the decision to remain loyal to his oral tradition, I do wonder about the harsh comments he made regarding Shemaya and Avtalyon. For it was those harsh comments that provoked the painful ban in the first place, and at the very end of his life, it was that pain he advised his son to avoid. Of course, we can never really know. All we have are his final words, which echo long after we read them.