

CHAPTER ELEVEN
R. CHAIM'S DERECH - ANALYSIS.

The modern age has witnessed a twofold change in the direction of the sevara. However, it appears that this developement, fundamental as it is, has, as its predecessors, bypassed the path of pessak. This is evident in the works of two of the contemporary giants of halachah, R. Chaim Ozer Grodzinski and the Chazon Ish.

Though R. Chaim Ozer's work evidences traces of the influence of Volohzin and R. Chaim Brisker, and he was thoroughly adept in the new derech of R. Chaim, his Responsa, ~~Achiezer~~, avoid its use in practical decision. Rabbi Zevin (1) surmises in fact that the reason R. Chaim, founder of the new learning, avoided hora'ah, was due to his innovative method of study. In discussing this he says, "In practical hora'ah one cannot burst the bounds. In this field traditional methods of study are fundamental".

The sole exception to this "practical guide" seems to have been the Rogotzover, R. Joseph Rosen, who ignored completely halachic literature after the Rishonim and found all the precedents required for contemporary problems in the Talmud and Rishonim alone. It is a common trait of both R. Chaim and of the Rogotzover that they avoid discussion with acharonim and hardly mention them. Though their systems are similar and both lead away from the mainstream of traditional forms of exposition, the Rogotzover remained in the field of pessak and is one of the most prolific respondents ever. This, in spite of his ignoring the traditional links in the chain of pessak development.

There is a kinship between the Rogotzover and the Biur Hagra in that both sought to base the halachah, and even custom, upon the words of Chazal alone. Neither argue with contemporaries, both seek, each in his own way the basic primary sources alone. Whilst the Rogotzover virtually ignored the Shulchan Aruch, the Gaon showed how, far from being a source of diversion from the Talmudim and Rishonim every one of its statements is contained in Chazal. The

(1) Ishim Veshittoth, p. 175.

Gaon thus succeeded in preserving the orderly, historic progression of pessak, whereas the approach of the Rogotzover could well prove disastrous in the hands of one of lesser calibre than he was himself.

The modern changes in the use of the sevara were fathered by R. Chaim Soloweicyk (1853-1918) and Rabbi M.A. Amiel (1883-1946) respectively. Though their aims differ it seems hardly possible that R. Amiel's magnum opus, Hammidoth Lecheker Hahalachah, could have been written but for the pioneering work of R. Chaim. This is not, farbeit, to belittle in any way the tremendous originality exhibited by R. Amiel in his wide ranging, thorough penetration of halachah. His work however, which to my knowledge has not unfortunately been continued, flows as an important offshoot directly from that of R. Chaim which was in vogue in the great centres of learning in Lithuania and was the major influence upon the masters in the centres where Amiel studied (2).

Whilst R. Chaim developed analytical concepts and tools which he applied locally, that is to say directly to the subject in hand, Amiel embarked upon the much more ambitious project of attempting to construct such principles for halachah as a whole. His intention was to expound the concepts which form the intellectual ingredients of the halachic mind.

In his attempt to ground the thousands of sevaroth employed throughout the ages, in a limited number of major principles (3), sevara as a logical tool comes to be treated scientifically. Types of sevara are classified and with tremendous erudition and consistency his classification and arch types of sevara are applied to the vast sea of the Talmud and the enormous mass of its supporting literature down to the present time.

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- (2) Prof. L. I. Rabinowitz of Jerusalem, pointed out in a communication to me that though his father in law, the late Rabbi Amiel was greatly influenced by the system of R. Chaim, he "always stated his indebtedness for his new approach in the halachah to the system of higgayon of his predecessor as Rabbi of Schwientyan, the late Rabbi Reines, one of the founders of the Mizrach". "And," he continues, "I think you will find that Rabbi Amiel's middoth owe something to that as well as to R. Chaim, and his system may even be considered as a fusion of the two".
- (3) Which he called "middoth", paralleling the middoth by which Torah is interpreted.

"The number of sevaroth propounded since the Talmud to the present day is virtually limitless. Is it possible to assume that all these sevaroth are but towers flying in the air, without prior foundations? Is it possible to consider that every single sevara is a world unto itself without known principles which bind numbers of sevaroth to a single principle?

The number of derashoth by means of which Chazal expounded the Torah in deducing halachoth also totals many thousands and yet they are all reducible to the framework of the thirteen hermeneutic rules, so that so many hundreds fall under gezerah shavah, so many hundreds or thousands Likewise, it is necessary to discover the middoth of sevara. For though the actual number of sevaroth is limitless, ultimately the middoth which give rise to the sevaroth are certainly determined and fixed and must embrace all sevaroth (4)."

Now Amiel certainly succeeds in showing the basic continuity of halachic thought, but he does this by conceptualising to a large extent philosophically, many of the basic norms of halachic thinking. Whilst the essential unity of Torah finds no incongruity in applying philosophical terms or concepts to halachah and jurisprudence (5), in this usage Amiel parts with ^{the} accepted terminology of the analytical school of R. Chaim. Such "philosophical middoth" as, cause and effect (middah 1), and its derivative middoth; etzem umikreh - essence and accident (No. 17); bekoach - actual and potential (No. 18), stand side by side with metziuth vedin - fact and law (No. 11).

It is not improbable that Amiel employs philosophical terminology deliberately in order to stress the philosophical/logical background of halachic thinking in an age that tended to look down upon Talmudic study from the "olympic heights" of secular knowledge; as also to emphasise the basically rational principles of halachah.

It is perhaps instructive that in describing the simple syllogism he says: "All men are mortal. Socrates is a man. Therefore Socrates is mortal (6)". Which other halachist would have chosen Socrates specifically for his example!

(4) Hammiddoth, Introduction, Ch. 6.

(5) R. Joseph Rosen did not hesitate to mingle them at will see Zevin, ib. pp. 81 and 121.

(6) Hammiddoth, ib. Ch. 5.

His treatment of time (7) is both philosophical and intensely practical.

His method therefore differ from those of the analytical school in number, terminology and scope. In actual content they are not, when placed side by side with those developed by the analytical school, incongruous.

Amiel is however, careful to point out that though "it is clear that all the foundations of logic are to be found in the bases of halachic inquiry, the sages did not employ logical terminology as such (8)", this has to be done by the student.

His work contains numerous illuminating asides. Two examples will suffice. Interestingly, Amiel finds (9) that the cast of mind underlying the Talmud Babli differs in predilection from that underlying the Jerushalmi. Whilst the former is more given towards a mathematical type of construction the latter evidences bent for logical analysis. Similar distinction is to be discovered between the Rishonim of France and those of Spain. The latter tend more towards the logical analytical approach, the former incline towards the mathematical. There is however, no hard and fast line or rule.

With respect to systems of classification he also discovers similar, separate trends (10). Thus, whilst R. Hai Gaon classifies on the basis of definition stemming from the intrinsic logic of subjects, Maimonides in the Yad classifies on the basis of congruous subject matter, so that subjects which enjoy a common logical basis are nonetheless scattered in the Yad whilst they are united in R. Hai's work (11).

The analytical school proper was founded by R. Chaim Soloweicyk whose method of study is called both havannah, understanding and chakkirah, investigation (12).

(7) Introd. Ch. 7.

(8) ib. Ch. 8.

(9) ib. Chs. 9 and 10.

(10) ib. Ch. 11.

(11) It should be noted that one of the features common to adherents of the analytical school lies in illustrating that scattered Maimonist dicta inhere a common logical foundation.

(12) Both terms are employed by his sons in their Introduction to Chiddushei R. Chaim Halevi.

The method is strikingly similar to that employed in ~~the~~ chemical analysis and may be briefly stated as follows. A proposition is first broken down into its component parts. Once these are established we find that we have what are called "two dinnim", two laws (13). Careful examination of the proposition or case in hand, in their light follows and this illustrates the manner in which each fundamental component operates within the propositional framework. The influence of each component is traced as is its modifying effect upon the second component and the degree to which it contributes and shapes the composite proposition.

Once it is appreciated that two basic factors are at work the subject matter is rendered amenable to treatment from different viewpoints. Seemingly internal incongruities disappear since these are shown to be the reflection of two and not one basic criterion. The relative weight of each of the factors may be determined as also its limitations.

The result of this is that the sevara in the hands of R. Chaim becomes the tool for the elemental understanding of the Talmud. It does ^{not} erect castles in the air, it lays bare the building bricks of Talmudic discussion so that one is led by R. Chaim to plumb the depths of the plain meaning of the text.

The "two laws" may refer to subject and object or, one to the article (cheftza) the other to person (gavra). One may be active the other passive; one general the other particular. One may be found to refer to essence the other to the incidental aspects of the case. One may refer to fact the other to law. The following example (14) illustrates the method by showing that there are two laws of intention (kavannah) with respect to prayer, one essential the other incidental, each with its own effects upon the practical halachah.

The section is based upon an apparent contradiction in the Yad of Maimonides. In Tephillah 4,1. Maimonides lists "the intention of the heart" amongst the five necessities of prayer. In the same chapter (15) he says: "How so intention? All prayer without intention is not prayer. And if one prayed without intention he must pray again with intention".

It appears, says R. Chaim, that the law requiring intention applies to the entire prayer. But, he asks, Maimonides himself (16) declares that "one who prayed without

(13) There are instances of three such basic laws, but these serve only to emphasise the system.

(14) Taken from Chiddushei R. Chaim, Hilchoth Tephillah.

(15) Halachah 15. (16) ib. 10,1

intention of heart must pray again with intention. If however, he had intention during recital of the first berachah (of the Shemoneh Esreh) he need not (pray again)?"

R. Chaim resolves the contradiction as follows. There are two kinds of intention with respect to prayer. The one, to understand the meaning of the words uttered, which is basically a law of kavannah. The second, that one must be aware that he is standing in prayer before G-D, as Maimonides states (17): "How so intention? That he clear his heart of all thoughts and see himself as standing before the Divine Presence".

This second intention is of the essence of prayer, so that if his mind is not free from other thoughts, and one does not see himself as standing before G-D there is no act of prayer. Such a one is acting without purpose (mithassek) and his activity is not considered a ^{valid} legal act. Hence, without such intention throughout the entirety of prayer it is as if one had not prayed at all. On the other hand if one was aware of standing before G-D but does know the meaning of all the words uttered, this is a specific requirement of prayer whose failure of fulfillment does not in other than the first blessing of the shemoneh esreh, invalidate the prayer.

R. Chaim distinguishes between the essence of prayer and its secondary, or accidental characteristics and on this basis the contradiction in Maimonides is resolved, for with regards the incidental characteristics the halachah decides which are indispensable and which not.

The solution, whilst probing the depths of prayer is, it will be noted, deceptively simple. Once grasped it is, difficult to see Maimonides in any other light. This is so of the majority of the work accomplished by R. Chaim and his followers. Unforced, it has the ring of truth.

The method employed by R. Chaim was taken over and extended by his students who popularised his "way of learning" in the great Lithuanian Yeshivah. Traditional pilpul gives way to analysis which becomes in many instances highly conceptual. The school is characterised by terminology, such as cheftza - gavra; or fact and law; and common modes of thought. (18)

(17) ib. 4,16.

(18) On the development of the School and its types of chakkirah, see the article by Norman Solomon, Hilluq and Haqira, A Study in The Method of The Lithuanian Halakhists, in, Dine Yisrael, Vol. 4, T.A. 1973, pp. LXLX - CVL; and the relevant sections in R. Zevin's Ishim Veshitoh, T.A. 1952.

Whilst some of its terminology borders on the philosophical, only Amiel consciously employs philosophical terms to define the principle terms of his analysis.

The great Roshei Yeshivah of Telz, Slobodka, Grodno, Lomza, Kamenitz and others, all develop the system of R. Chaim and through these masters the method passed to contemporary yeshivah. This is probably the origin of limiting the curriculum in modern Yeshivah to the Orders Nashim and Nezikin, whereas formerly the great Yeshivah, such as Volozhin and others would study the entire Shass, tractate after tractate. Nashim and Nezikin, as Kodeshim which also enjoys particular attention nowadays, lend themselves more readily than other Orders to such analytical treatment.