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## **"The Halakhic Person and the Halakhic Process"**

(Excerpts of the Concluding Portion of the Sheur Klali--3/31/97)

*The sheur dealt with a responsum of Rabbi Isaac Elchanan Spektor, the Rav of Kovno and the eponym of our Rabbi Isaac Elchanan Theological Seminary (RIETS). He was universally revered both for his scholarship and his piety and personal integrity. The following remarks concern an aspect of the personality of a giant of Torah, and the halakhic process in general as it is revealed in this and other responsa of the Gaon of Kovno.*

**His Personality: Civility.** It emerges from the responsum that is the subject of this sheur that the local Rav, who referred the problem to R. Isaac Elchanan, had made a mistake; had he given the lederly couple who turned to him for guidance the right advice, the problem that so distressed the wife after her husband's demise would never have arisen. *Yet note how civil, even respectful, R. Isaac Elchanan is of this anonymous Rav: First—he lets him remain anonymous; he has no interest in exposing him to the opprobrium of his colleagues. Second, he does not insult him--no calling him an am ha-aretz, and no blistering attack demanding that he should have consulted him as a higher authority; and third, a special effort to interpret his actions in a favorable light. This is how a true gadol be 'Yisrael acts--and how we too should conduct ourselves.*

**The Halakhic Process.** An important lesson to be learned from analysis of this responsum of R. Isaac Elchanan concerns the nature of the whole halakhic method.

To put it into somewhat extreme forms, abandoning subtlety for the sake of clarity, there are two competing points of view:

- a) the halakhic process is totally objective and univocal; our purpose is but to discover the single halakhic truth, and to approach the question at hand utterly without prejudice or bias.
- b) the Halakha is what we want it to be; it is the formal dressing for rabbinic policy, whether explicit or implicit, conscious or unconscious.

The responsum we studied belies both of these conflicting theses--each in a different way.

The **second view**, that the Rabbis can make of the Halakha whatever they wish, is not only inconsistent with the whole history of Halakha, but it is pernicious in that it contradicts the most basic assumptions of the Halakha. It assumes an almost infinite plasticity on the part of the Halakha, and bears within itself serious antinomian consequences. If indeed, as the

early Reformers and later their Conservative followers maintained, and is now repeated in different form by their contemporary epigones, the Halakha is what the Rabbis want it to be and never mind its formal structures--then why did R. Isaac Elchanan and other halakhic giants of all the generations engage in such mighty intellectual struggles, with enormous investments in time and cognitive exertion, to find a permissive solution for some unfortunate soul, if they could have cavalierly declared their permission without the elaborate justification in the sources? Why not proclaim that a think-tank has concluded that the Halakha must yield to the demands of the hour, that sociology determines Halakha, that we have assigned an analysis of the details to a committee from an adult ed class, and thus pronounce permission for whatever ails Jews?

The **first view** has much to commend it. It is aesthetically attractive--a perfect, symmetrical, intellectually consistent system that has one answer to every question, is impervious to the vicissitudes of mundane life, and majestically imposes its clear judgment on the faithful.

Beautiful--but not completely accurate. In theory, one *can* indeed speak of Halakha as a self-contained system that is objectively discoverable and is ontological in its judgments. There are, indeed, a number of Rishonim for whom this assessment holds true. But there are also a good number of eminent Talmudists of both earlier and later generations, for whom the Halakha is nominalistic and pluralistic, in that it does not presume to have only one answer for every question, because *some* questions have a number of different answers--some still awaiting to be discovered by some industrious scholar yet unborn. Of course, they hold that the Halakha has form and insists upon its formalism for very good reason, but it is not rigidly univocal.

When it comes to *pesak* (decision-making), to applying the divine judgment as it emerges from the halakhic process to the messy and ragged edges of undisciplined and undomesticated experience, too rigid a conception of Halakha clashes with the idea of Halakha as a divinely ordained system that has always had, as its chief virtue, its applicability to Jews in all times and climes. It does not conform to the history, tradition, and methodology of *pesak*. To say that one must necessarily undertake the discovery of the single halakhic truth in a purely objective manner, coming to it utterly without any "agenda," is certainly appropriate to the *bet midrash*--but not to the halakhic courtroom. It is inconsistent with the responsum we just analyzed--or most other responsa in any of R. Isaac Elchanan's volumes or of any other major decisor.

R. Isaac Elchanan wanted to spare an *agunah* the bitter fate and endless suffering of living widowhood, or--in our case--help her brother-in-law avoid the humiliation of the *halitzah* procedure. *He came with an agenda*--to find a valid reason to prevent suffering by people. So, he didn't throw every stringency in the book at them, he didn't insist that they have to abide by all opinions, no matter how remote or unlikely, but struggled to find a way to make life more humanly livable for his fellow Jews. And he succeeded in almost all cases--in 155 of 158 cases, he was able to locate or devise permission for her to remarry and carry on with a normal life.



The vast number of controversies in the Talmud distressed Maimonides; he regarded them as a sign of exile and its attendant dislocations. But R. Yonah welcomed them as signs of divine vitality. For us, the controversies make it abundantly clear that there is place for maneuvering within the halakhic structure, that sometimes one answer commends itself, and another time another answer is more appropriate, so that despite the fact that Halakha is systematic and structured, it does leave place for adaptation to life--which is always in flux, always in motion, always changing.

When you have conflicting opinions between the House of Hillel and the House of Shammai and then divisions of opinion among Rashi and Rambam and Ritva, and different ways of resolving a *sefek sefeka* (a compound doubt)--as in the responsum under discussion--then you are permitted to approach Halakha with a bias, searching out those solutions most appropriate to the questioner, to *Kelal Yisrael*, and to simple human compassion. *Of course, the bias must never be political or egotistical*; it must be the divine attribute of mercy to eliminate or reduce suffering, it must be for the sake of *Tikkun ha-Olam* ("repairing the world") or *Tikkun ha-yishuv* ("repairing the community") or *Tikkun ha-nefesh* ("repairing one's own soul") or, best of all, to enhance the Sanctification of the Divine Name and avoid its desecration.

So, while the basic structure of Halakha is *inviolable*, it has *room for movement*--but it is not so flexible that it can be made to say whatever you want it to say. And even when options are available, they must be rigorously tested in the crucible of knowledgeable halakhic experts--not by overly self-confident amateurs. And in all cases, the method of Halakha and the *mesorah* (tradition) of *pesak* must be rigorously adhered to.

I think it is obvious that if I had to choose between these two alternative views of the Halakha, I would unquestionably opt for the first rather than the second. I prefer to risk irrelevance than to flirt with irreverence. But there is no need to choose between them, because, as I mentioned, there is adequate authority for the idea that Halakha is neither as rigid as the first view nor as fluid and plastic as the second.

The living Torah which the Almighty in His infinite goodness gave us is neither so loose and ill-formed that it is not a Torah, nor so resistant to the realities of the life of ordinary people that it bears no relation to life.

### Conclusion.

The ability of the Halakhist to deal with problems as Halakhist have throughout the generations, derives from his capacity to hold onto two conflicting theses simultaneously.

Let me explain by referring to a verse in the Sidra of *Shemini*.

On the verswe, "And Moses said to Aaron, *kerav el ha-mizbeiah*, draw near to the altar" and offer up the requisite sacrifices, and "atone for for yourself and for your people," Rashi comments: "'Draw near to the altar'--for Aaron was bashful and afraid to approach the altar; hence Moses said to him, Why are you so hesitant? It is this for which you were chosen!"

The Gerer Rebbe, author of the immortal *Sefat Emet*, notes that two conflicting qualities are called for when you approach the altar of Torah, when you encounter the word of our eternal G-d: on one hand--"bashful and afraid," a feeling of impotence in the face of the Infinite, of your own inadequacy to the task at hand; and on the other hand--"for this were you chosen," the awareness that you are destined for great things, that you had better take action and accomplish your mission.

It is this ambivalence that marks the true *ben Torah*, whether young or old, as well as the accomplished master of Halakha. You must be *bold and shy; forward and reserved; daring and reluctant; crushed by your own inadequacy and weaknesses, and elevated and inspired by the scope of your vision and the nobility of your mission*--all at the same time!

And the way to achieve this remarkable balance is to be keenly aware of your responsibility--to yourself and to the people to whom the Torah was given and whom you serve: "and atone for yourself and for your people."