

Halakhic Approaches of Two Modern Posekim

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By Rabbi Marc D. Angel

In the introduction to his first volume of responsa, Rabbi Benzion Uziel described the goal and method of a halakhic decisor:

"The Talmudic judge or *posek* may not say to himself or to his questioner regarding a question which comes before him--let me look at the book and I will decide the law according to whatever is already printed in the book. This is not the method of those who give halakhic decisions (*ba'alei hora'ah*). Rather, his obligation is to search the source of the Halakhah, to clarify it, refine it, purify it, according to his relevant ideas, his proper logic and his straightforward reasoning, to judge a true judgment and to conclude the matter according to the Halakhah. . . . In all my responsa I have not attempted to be lenient nor to be strict from my own mind or inclination. Rather my intention and my goal were to search and find the truth."

Each *posek* of every generation attempts to establish the Halakhah according to its real truth. He attempts to understand it deeply and accurately, and to follow the sources wherever they may lead, regardless of his own inclination. Yet, a study of responsa literature reveals a variety of different styles, attitudes and

decisions of *posekim*. Although halakhic decisors rely on the same classic rabbinic texts, they are influenced by the specific time and place in which they live, as well as by their own personal sensitivities and intellectual inclinations.

In this essay, I will focus on two great modern-day *posekim*, studying how they approach similar halakhic questions. Both are scholars of vast erudition, of wide influence; both have written and published many works. The two *posekim* to be discussed are Rabbi Moshe Feinstein and Rabbi Haim David Halevy.

Rabbi Moshe Feinstein, of blessed memory, must certainly be counted among the greatest rabbinic authorities of our generation. His volumes of responsa, *Iggrot Moshe*, are highly respected and widely studied. Rabbi Feinstein was raised and trained in Eastern Europe. When he came to New York, he continued the traditions which he learned from his father and teachers in Europe. He was part of the Yiddish-speaking Torah world.

Rabbi Haim David Halevy, of blessed memory, who served for many years as the Sephardic Chief Rabbi of Tel Aviv-Yafo, was born and raised in the Sephardic tradition. A student of the late Rabbi Uziel, Rabbi Halevy is part of the Sephardic Torah tradition which flourished in the Ottoman Empire.

Rabbi Feinstein was Ashkenazic, Yiddish-speaking, and lived in the Diaspora. Rabbi Halevy was Sephardic, Hebrew-speaking, and lived in Medinat Yisrael. A study of the halakhic decisions of these two men will shed light on the halakhic process. References in the text in the case of Rabbi Feinstein refer to *Iggerot Moshe*, and in the case of Rabbi Halevy refer to *Aseh Lekha Rav*, unless otherwise stated.

I would like to preface the analysis by saying that this article does not attempt to pit these two Torah luminaries against each other, nor to draw conclusions as to which follows a "better" method. Nor do I claim that this study is exhaustive, or that other examples than those which I cite could have been chosen. I offer this analysis as a study of contrasts in outlook and halakhic decision-making, fully aware that others might handle this topic differently.

THE WORLD OF TORAH AND THE OUTSIDE WORLD

In studying the volumes of *Iggrot Moshe*, one finds a spiritual world in which Torah study and observance are the central reality of life. Non-observant Jews, especially those who identify as Reform and Conservative (particularly Reform and Conservative rabbis), are often categorized as *resha'im*, wicked people, or *koferim*, deniers of the true faith. The non-Jewish world is essentially viewed as

being hostile towards Jews. Foreign ideas are dangerous and corrosive to true Torah knowledge, Rabbi Feinstein records with pride that he is not influenced by foreign ideas. "My entire world view stems only from knowledge of Torah without any mixture of outside ideas (*yediot hitsoniyyot*), whose judgment is truth whether it is strict or lenient. Arguments derived from foreign outlooks or false opinions of the heart are nothing. . ." (*Even ha- Ezer*, 2:11).

The spiritual world reflected in the responsa of Rabbi Halevy is also one totally committed to Torah; and it is open and inviting, unafraid of others. One finds a profound tolerance for those who do not understand or observe Halakhah. There is a reluctance to categorize people as *resha'im* or *koferim*. Rabbi Halevy is open to wisdom from all sources, Jewish and non-Jewish. The responsa manifest a deep respect for the words of our sages, but also a flexibility in dealing with modern reality.

Let us turn to some specific examples. In one of his responsa (*Yoreh De'ah* 3:83), Rabbi Feinstein stresses the importance of learning Torah studies in the morning in yeshivot, relegating secular subjects to a time later in the day. This arrangement serves to highlight the importance of Torah studies, and to inculcate in the students the belief that the secular studies are not as important. Indeed, the main responsibility of a yeshiva is to teach Torah studies; secular studies are taught as a concession to the laws of the country. In another responsum (*Yoreh De'ah* 3:73), Rabbi Feinstein forbids teaching science from texts which deny that God created the world. If it is impossible to obtain science textbooks which conform to our religious belief, then the offensive pages in the textbooks should be torn out. Rabbi Feinstein rules that a teacher of Greek and Roman history may not read books written by ancient authors about their religions. But books written by authors who reject and scorn those religions and which point out their foolishness are not forbidden. If a teacher is required to teach about the religions of the Greeks and Romans, he should do so in such a way as to make it clear that he considers them to be foolishness and emptiness. There may even be a positive result of this teaching--namely that students will realize that religions which were once thought to be true by so many people are actually quite foolish. Therefore, they should not be surprised that many people today believe in religions which are essentially false and nonsensical (*Yoreh De'ah* 2:52). For Rabbi Feinstein, then, secular knowledge is not highly prized. Secular knowledge which contravenes religious teachings is dangerous, and should not be taught, or only be taught with derision.

A different attitude towards secular knowledge emerges from the responsa of Rabbi Halevy. Obviously, his main concern is also Torah study. Yet he recognizes the need for secular studies, and himself draws on sources other than rabbinical. He was asked by a religious student if it was permissible to study secular subjects (history, literature, etc.) on Shabbat in preparation for examinations. Rabbi Halevy cites rabbinic authorities who forbid secular studies on Shabbat, as well as those who permit such study on Shabbat. Rabbi Halevy suggests that it is better to sanctify the Sabbath day by studying holy texts rather than books of general wisdom. Nevertheless, not being allowed to study for examinations would cause the student suffering and anxiety. Therefore, we may rely on the opinion of the one who permits such study on Shabbat. "According to this, it is permissible to study general studies during the period of examinations, and the principle is that all your deeds should be for the sake of Heaven" (I :36).

When Rabbi Halevy was asked a question about transcendental meditation, he wrote a lengthy responsum in which he described its procedures (2:47). He consulted a student who was versed in the subject to discover exactly what it was. He also read up on the subject. Through his consultation and his reading, he determined that the initiation ceremony was idolatrous and that the mantras were the names of deities. If one could study the methods of transcendental meditation without going through the initiation procedure, there would be no halakhic objection. Nevertheless, Rabbi Halevy states that a person who lives a life of Torah and mitzvot should find sufficient spiritual satisfaction so as not to need to resort to transcendental meditation.

In another responsum (2:2) Rabbi Halevy deals with the question of life after death, drawing not only on the teachings of the Zohar and other classic Jewish sources, but also on the findings of contemporary researchers of the topic. He quotes the work of a psychiatrist from the University of Virginia along with Jewish classical texts.

Scattered throughout his writings are references to various "secular" thinkers including Socrates, Aristotle, Philo, Descartes, Hume, Schopenhauer and Einstein. He valued academic contributions to Torah studies. He recognized the importance of secular studies for students so that they could gain basic life skills to enable them to earn a living when they grew older. (1:36; 4:31; 4:46; 6:87; 8: short answers 54)

TRADITIONAL SOURCES AND CONTEMPORARY KNOWLEDGE

There are cases where halakhic practice has been long established; yet modern research and discoveries may call for a reevaluation of the halakhic practice. There sometimes arises a conflict between traditional practice and contemporary knowledge. An example in point is cigarette smoking. For many generations, halakhists did not forbid the smoking of cigarettes. With recent medical research, though, we have learned that cigarettes are in fact dangerous to health. Does the Halakhah continue to maintain the permissibility of smoking cigarettes, since they were not forbidden in the past? Or does the Halakhah take into consideration the new findings, and thus declare cigarettes forbidden?

Rabbi Feinstein (*Yoreh De 'ah* 2:49) states that since there is evidence of the danger to health caused by cigarettes, a person should certainly pay attention to this fact. Yet, he argues that one may not prohibit cigarette smoking on the basis of its health dangers, since so many people have smoked and do smoke, and since "the Lord protects the simple." In particular, writes Rabbi Feinstein, a number of Torah luminaries of past generations smoked, and a number of Torah sages in our own time also smoke. Therefore, it is obvious that Halakhah does not forbid cigarette smoking (see also *Hoshen Mishpat* 2:76).

Rabbi Halevy, on the other hand, rules that cigarette smoking is forbidden according to Halakhah (2: 1). The new evidence concerning health hazards of smoking is overwhelming and cannot be ignored. Rabbi Halevy argues that if the rabbis of the Talmud and the great *posekim* of earlier generations had known the scientific research which is available to us now, they certainly would have forbidden cigarette smoking. In another responsum (3:25), Rabbi Halevy deals with the case of a person who took a vow not to smoke, but now wants that vow to be annulled. He rules that one should not find a way to annul the vow, since smoking is itself a prohibited act. On the contrary, one should try to convince the person to uphold his vow, since this is in his own best interest (see also 6:58, 7:67).

Another example of traditional practice requiring reevaluation based on modern discoveries relates to kosher meat. According to Halakhah, one should not leave meat unsalted for three days, since the blood in the meat will become congealed and will not be drawn out by the salting process. If, however, the unsalted meat is soaked in water within three days, then it can remain another three days (less a half hour). This assumes that the water keeps the meat fresh, so that the blood will not congeal. Thus, traditional halakhic practice has been to soak unsalted meat at less than three-day intervals. The question arises: since we now have freezers, may we place unsalted meat in them and rely on the cold to preserve

the freshness of the meat--thereby not requiring the meat to be soaked every three days? Rabbi Feinstein ruled that one should not rely on freezers, but should actually soak the meat at the regular required intervals. Although he agrees that according to logic, freezing the meat should be satisfactory, yet there are many who have required the soaking of the meat. Rabbi Feinstein rules that only after the fact, and only in case of great need, may one salt meat that has been frozen (and not soaked) for more than three days. Unsalted meat kept in a refrigerator is definitely prohibited if it remained without being soaked for three days (*Yoreh De'ah* 1:27; 2:42).

On the other hand, Rabbi Halevy rules that meat which was kept frozen in a freezer is permissible to be salted and cooked, even if it had not been soaked during the three-day period. This may even be done initially, "since our eyes see that meat found in a freezer--its blood does not become dry within it at all, and it is as fresh as the moment when it was placed into the freezer, and this is obvious and clear" (*Mekor Hayyim*, 5:26 I :26).

Both *posekim* deal with the issue of natural childbirth: is the husband permitted to be in the delivery room when his wife is giving birth to a child? Rabbi Feinstein states (*Yoreh De 'ah* 2:75) that he would not advise this practice to anyone who asked him. He believes that labor pains are great, and that the presence of the husband is not able to turn the wife's mind away from her suffering. Nevertheless, if a woman wants her husband present in the delivery room, there is no prohibition, as long as the husband stands at her head and behaves modestly. Rabbi Halevy (4:58) also expresses his generally negative attitude towards having the husband present during childbirth. Yet, he goes on to note that modern research has found that the husband's presence can indeed be helpful to his wife during delivery. Although this is a relatively new finding, and our mothers and grandmothers were perfectly able to have children without their husbands being present, it is possible that contemporary women may feel the absolute need for their husbands to be present during delivery, Without their husbands there, the women of today may feel that they will suffer greater pain and will be in greater danger. Therefore, for women who feel this way, Rabbi Halevy believes that the husbands should be present in the delivery room since this is a matter bordering on *pikuah nefesh*, saving another person's life.

WOMEN LEARNING TORAH

The question of the permissibility of teaching Torah to women is a pressing one in contemporary halakhic discussions. Rabbi Eliezer's statement that "whoever teaches his daughter Torah teaches her obscenity" (*Sotah* 20a) is well-known and

often quoted. Maimonides, *Hilkhot Talmud Torah*, 1:13, rules that one should not teach Torah to girls, since women have limited intellectual ability. Halakhah has generally permitted women to study only the written Torah as well as those specific laws which they need to govern their own lives. Until modern times, it has generally been regarded as forbidden to teach women the Oral Torah. Rabbi Feinstein (*Yoreh De 'ah* 3:87) follows the classic halakhic position opposing the teaching of the Oral Torah to women. The administration and teachers of a certain religious school for girls wished to introduce the teaching of Mishnah. Rabbi Feinstein rules that this should not be done, since our sages have established the Halakhah that women should not be taught the Oral Torah. The only exception to this is the teaching of *Pirkei Avot*, since that work deals with ethical conduct and teaches proper behavior. But other tractates are certainly not to be taught.

Rabbi Halevy (2:52) cites the classic texts which forbid teaching Torah to women. However, he notes that our eyes see that women are in fact able to learn complicated subjects quite well. The original assumption that most women are not capable of learning Torah in a serious way is problematic, when we see how well women today are able to study many complex subjects on a very high and serious level. Rabbi Halevy posits that in olden times when women received no formal education, teaching them Torah--which is so sublime and elevated--was problematic. Girls simply did not receive the intellectual training to be able to handle the study of Torah in a proper fashion. However, since now girls do receive general education, the situation is different. Therefore, those girls who are able to handle general topics may also be taught Torah, including the Oral Torah. Older girls, who have already shown their academic ability in studying other topics, may be taught the Oral Torah, which is a source of life for all who engage in it.

RESPONSIBILITY OF TEACHING TORAH

Since Torah education is a primary value of Halakhah, the question arises whether Torah teachers have the right to go on strike if they are not satisfied with their remuneration. Rabbi Feinstein takes a dim view of such action. When asked whether a teacher was allowed to come to class late, arguing that since he was paid in such an unsatisfactory manner he was free to shorten the time of his instruction, Rabbi Feinstein rejected his claim (*Yoreh De'ah* 1:138). Indeed, a teacher of Torah is not allowed to waste even one minute of precious time that could be given to Torah education. In another case (*Yoreh De 'ah* 3:74), Rabbi Feinstein deals specifically with the question of a strike of Torah teachers who have not been paid on time. He rules that, in essence, a strike by Torah teachers

is forbidden except in the most extreme circumstances, where the teachers are so worried about their income that they are unable to concentrate on their teaching. It would be a rare circumstance when a strike by Torah teachers would be halakhically justified. (See also *Hoshen Mishpat* 2:59.)

Rabbi Halevy (3:23) approaches the question from a different perspective. He argues that the ultimate responsibility of teaching children Torah does not rest on teachers, but on parents. The Torah places the obligation on parents; if they are not able or do not have the time to teach their children, then they may appoint teachers as their agents to do the actual teaching. Therefore, if Torah teachers are dissatisfied with their remuneration, they may decide to stop working as the agents of the parents. In that case, the responsibility reverts back to the parents themselves. Thus, if there is *bittul Torah* caused by a strike of teachers, then the responsibility is solely on the shoulders of the parents, not the teachers. If the parents are anxious that their children not lose time that should be devoted to studying Torah, then let the parents take off work and teach their own children. If they want the teachers to do this work, then they must pay a satisfactory wage. This position is further elaborated in another responsum (5:23).

CALLING NON-OBSERVANT JEWS TO THE TORAH

There are solid halakhic sources which would forbid calling non-observant Jews to the Torah. Since they desecrate the Sabbath or otherwise break the laws of the Torah publicly, they have forfeited their right to the honor of being called to the Torah during prayer services. Rabbi Feinstein (*Orah Hayyim* 3:12) explains that the blessing of *koferim*, scoffers, is no blessing and therefore one should not respond with Amen afterwards. This refers only to those who actually reject faith in God; but if a person transgresses the laws of the Torah, even the laws of Shabbat, without considering himself a heretic, then his blessing is valid and may be answered with Amen. Therefore, one should not call to the Torah anyone who is a *kofer*, even if he had been raised that way by his wicked parents. Since he does not believe in the sanctity of the Torah, his blessing is not valid and he should not be permitted to read from the Torah. Yet, if he believes in God and His Torah, though he commits sins, he may be called to the Torah. The authorities, though, should do as much as possible to diminish the opportunity for such people to be called. It would be preferable to arrange things so that only observant Jews would be called.

In another responsum (*Orah Hayyim* 2:73), Rabbi Feinstein rules on a case of a boy born of a Jewish mother who was married to a non-Jewish man, May this young man be called to the Torah on the day of his Bar Mitzvah? Rabbi Feinstein

responds that even though the child is certainly Jewish according to Halakhah, since his mother continues to live in her wickedness, we should do all that we can not to call the boy to the Torah on his Bar Mitzvah and not to allow any celebration in the synagogue. Likewise, it would be well not to accept him as a student in the Talmud Torah. These measures are *migdar milta*--preventive measures to discourage others from following the mother's bad example. Once the mother separates from her non-Jewish husband, then the boy may be accepted into the Talmud Torah and may be called to the Torah and have a Bar Mitzvah celebration. If there is a suspicion that accepting the boy into the Talmud Torah would create a bad influence on other children, then the boy is forbidden to be accepted in the school by law, not just because of *migdar milta*.

Rabbi Halevy (3:16) deals with a case of a Bar Mitzvah boy and his guests who came to the synagogue on Shabbat morning in a car. Since they have all violated Shabbat publicly, may the boy and his guests be called to the Torah? Rabbi Halevy notes that we live in a time when, unfortunately, the majority of our people do not observe the commandments. We should not push them away; on the contrary, it is incumbent upon us to bring them closer, to speak pleasantly to them, to show them the beauty of the ways of the Torah and commandments. Although in this case we clearly know that the boy and his guests have violated the Shabbat in public, nevertheless "in our generation, an orphan generation, it is proper to be lenient in such a case; and it is our obligation to bring closer, not to push away. And good God will forgive." Similarly, in another responsum (5:1) Rabbi Halevy rules that a Jew who violates Shabbat may be counted as part of a minyan, even though there are halakhic sources which would oppose this view. "It is obligatory upon us to find a way to be lenient." Our situation today is very different from the situation in which the Halakhah was first stated--when all Jews were observant of Shabbat. In those days, if a Jew transgressed the Shabbat in public, that was his way of showing disdain for the Torah. Today, however, even people who consider themselves "good Jews" transgress many Shabbat laws without even being aware of the implications of such transgressions. Although it would be preferable to have a minyan of properly observant Jews, a transgressor of Shabbat may be counted for a minyan if necessary.

THE RELIGIOUS SIGNIFICANCE OF THE STATE OF ISRAEL

Rabbis Feinstein and Halevy differ significantly in their understanding of the religious significance of Medinat Israel. On the question of whether aliyah is a positive commandment incumbent upon us, Rabbi Feinstein rules that it is a mitzvah--but not an obligatory mitzvah. That is to say, if one lives in Israel, then

he is fulfilling a mitsvah; but there is no special mitsvah in our time for someone living outside of Israel to go to settle in Israel (*Even ha-Ezer* 1:102). In contrast, Rabbi Halevy rules that it is quite obvious that a person who is able to make aliyah to Israel, and has no serious obstacle which prevents him from making Aliyah, transgresses each day for living outside of Israel, for not fulfilling an obligatory positive commandment. He states that it is an accepted Halakhah that there is a mitsvah to settle in Israel in our own time, just as this mitsvah was operative in the past. Furthermore, in our time it is clear that the land of Israel is a center of Torah study and is an excellent place to raise children in the ways of Torah. There is no place in the world where it is easier to fulfill the Torah than in Israel. One with vision will understand that there is no spiritual future for Jews except in the land of Israel.

Rabbi Feinstein refers to those Zionists who established the Israeli flag, most of whom were not religious, as being *resha'im* (*Orah Hayyim* 1:46). Rabbi Halevy (1:3) recognizes that many of the founders of the modern state of Israel were not observant of Torah; nevertheless, he says, they played a vital role in the revival of the Jewish people. Many of the Torah-observant people of the last century were not receptive to working for and establishing a Jewish state. The Divine Providence called on the non-religious Jews to lead the way towards the redemption of Israel. Although they viewed themselves as nationalists, in fact they were tools in the hand of the Divine Providence which was moving the people of Israel to redemption. Rabbi Halevy's attitude thus ascribes a positive role to founders of Israel, even though many were not observant of Torah.

Rabbi Halevy writes at length and with great enthusiasm about the sanctity of Israel, and that the State of Israel represents the beginning of redemption (1:3). With the national revival of Israel, he believes that we should cut down on the chanting of elegies and dirges on the fast day of the 9th of Av. Although we must continue to observe the day in remembrance of past destructions and in awareness that complete redemption is not here, we should nevertheless also make some indication in our observance that we are in the process of redemption. We should not continue the same pattern that existed prior to the establishment of the state of Israel (4:34). Rabbi Halevy rules that we should emend the Nahem prayer, recited at Minhah of the 9th of Av. That prayer refers to Jerusalem as a city "destroyed, humiliated, and desolate without its children." The fact is that this description is no longer accurate. Jerusalem--while not fully restored--is not destroyed, nor humiliated, nor desolate of its children. How can we recite these words in our prayers to God when the words themselves are not true? He suggests that the text be emended to read that God should have

compassion on the mourners of Zion and Jerusalem, the city which was destroyed, humiliated and desolate without its children. She *sat* with her head covered, etc. By placing the description in the past tense, we avoid speaking lies in our prayers to God. Rabbi Halevy was criticized for this emendation, but he responded forcefully and convincingly (2:36-39).

CONVERSION

There is a diversity of opinion among halakhic authorities on questions relating to conversion to Judaism. Rabbi Feinstein's responsa reflect considerable unhappiness with the contemporary situation. Since the preponderance of candidates for conversion are motivated by the desire to marry a Jewish partner, they are not usually committed to observing Halakhah completely. He explicitly states that he does not approve of conversion for the sake of marriage, and even though he does not prohibit this practice, he expresses strong disapproval (*Yoreh De'ah* 1:159). In another responsum, Rabbi Feinstein discusses the case of a convert who did not observe the commandments after his conversion. Even if he had stated at the time of the conversion that he was going to accept the commandments, it is clear that he never intended to do so. Rabbi Feinstein states that a convert who did not accept the commandments is certainly not considered a convert at all, even post facto (*Yoreh De'ah* 1:157; see also *Yoreh De'ah* 3:106; *Even ha-Ezer* 1:27; *Even ha-Ezer* 4:16).

Rabbi Halevy deals with the question of receiving converts in two important responsa (1 :23 and 3:29). He reviews the halakhic literature on the topic and concludes that the Halakhah of conversion is left to the discretion of the individual judges in each case. The Torah neither gave a commandment to convert non-Jews, nor did it give a commandment rejecting converts. The rabbis of each generation and in each situation were given the obligation of deciding whether to be lenient or strict in matters of conversion. The Torah wished that the mitzvah of accepting converts should always be considered as a *hora'at sha'ah*, with each judge deciding for himself whether to accept converts or not, depending on the specific conditions of his time and place. "Rabbinic courts which are lenient in conversion as well as those which are strict--all of them intend their actions for the sake of Heaven and work according to their pure understanding and conscience." Rabbi Halevy places the responsibility on the rabbis who accept converts to determine the sincerity of the desire to fulfill the commandments. There are public considerations as well as private considerations to be evaluated by the rabbis of the bet din.

CONCLUSION

In considering various responsa of Rabbi Moshe Feinstein and Rabbi Haim David Halevy, we have seen differences in attitude and in halakhic rulings. Since the purpose of this article was not to go through all the proofs and arguments of these *posekim*, readers should not rely on this essay for actual *pesak*, but should rather study the sources themselves. Moreover, there are many areas which have not been discussed in this article and which deserve study: e.g., questions of medical ethics and attitudes on halakhic methodology. By studying the responsa of two great *posekim*, representatives of different halakhic traditions, we can gain a deeper appreciation of the vitality and strength of Halakhah. We may broaden our horizons of halakhic inquiry. We may find models of halakhic authority which can teach us, inspire us and guide us.