The Death and Birth of the Halakhic Expert

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Introduction

Filling the position of *Posek haDor*, the leading halakhic arbiter of the Jewish people, has become an almost hopeless undertaking in our complicated and troubled times. We are told that the *Posek haDor* must be someone whose halakhic knowledge is greater than anyone else's. He must be someone who is totally imbued with Torah knowledge; he has acquired Torah values and refined his character to such a degree that he embodies, and is thus qualified to offer, *Daat Torah* (an authentic and authoritative Jewish view on all matters). *Daat Torah* is seen as quasi-prophetic, and thereby beyond reproach.[1] The *Posek haDor* has to decide on issues of life and death, literally and figuratively. He must make judgments about political matters—especially in and concerning the Land of Israel—that are so complicated that they are nearly beyond anyone's grasp. People insist that this person must have wisdom that surpasses anything ordinary mortals could ever dream of. He is asked to singlehandedly decide on matters that will affect hundreds of thousands of religious Jews, and, by extension, millions of secular Jews. This is most dangerous.

To Be A Posek HaDor: Is It Possible?

The establishment of the State of Israel cast all Jews around the globe into a new world order, and created a need for pioneering religious leadership and a completely new kind of halakhic arbiter. Social and economic conditions as well as ideologies have changed radically, creating major upheavals in Jewish life. As a result, unprecedented circumstances have arisen that need to be translated into reality. The question is whether the *Posek haDor* will grasp these opportunities and turn them into major victories so as to inspire people. Developments in the rabbinical world show that we no longer have such extraordinary people. Most of the time, halakhic authorities have withdrawn, living in denial and continuing to believe that the world has not evolved and that nothing of substance has happened that requires an altogether new approach.

Today, halakhic authorities need to lead religious Jewry through a new world order. They must realize that their views will affect Jews as well as Gentiles, for their voices will be heard far beyond the Jewish community, transmitted via the Internet. Their observations may cause ridicule and even anti-Semitism if they misrepresent Judaism and Jewish law. Rather unfortunately, this has happened on more than a few occasions.

The *posek* has to understand that he may be called upon to give guidance to an often extremely secular and troubled world that is in great need of hearing the words of a Jewish sage. His decisions must reflect the imperative that we Jews are to be a light unto the nations—a light that must shine everywhere. It is no longer possible to focus on the often narrow world of Orthodoxy and look down on or ignore the secular and Gentile world.

Is the Halakha Still Exciting and Ennobling?

Most Jews today are no longer observant, nor are they even inspired by Judaism. To them, it has become irrelevant and outdated. The reasons for this tragedy are many, but no doubt a major cause is the failure to convey halakha as something exciting and ennobling, like the music of Bach, Mozart, or Beethoven. Only when a Jew is taught *why* halakha offers him or her the musical notes with which to play

the soul's sonata, will he or she then be able to hear its magnificent music.

Just as great scientists are fascinated when they investigate the properties of DNA, or the habits of a tiny insect under scrutiny, so should even a secular Jew be deeply moved when encountering the colors and fine subtleties of the world of halakha.[2] But does the *posek* realize this, and does he know how to convey that message when he deals with halakhic inquiries?

The Curse of Nearsightedness

Many religious Jews are nearsighted and in dire need of a wider vision. Is making sure that a chicken is kosher all that there is to kashruth? Or, are the laws of kashruth just one element of a grand *weltanschauung* that defines the mission of the People of Israel; a mission whose importance surpasses by far the single question of a chicken's kashruth? Such inquiries are but one small component of a larger question concerning the plague of consumerism and humankind's obsessive pursuit of ever-increasing comfort. Should the *posek* who is asked about the kashruth of someone's tefillin not ask that person: "And what about the kashruth of your much-too-expensive and ostentatious car?" After all, the *posek* needs, foremost, to be an educator. Hard-line narrow rulings will not create the future for a deeply spiritual Judaism.

The first requirement of a *posek* is to live in radical amazement and see God's fingers in every dimension of human existence, including the Torah, Talmud, science, technology, and above all, in the constant changing of history, which may well mean that God demands different decisions from those of the past. Today's halakhic living is severely impeded by observance having become mere habit. As Abraham Joshua Heschel put it so beautifully:

> Indeed, the essence of observance has, at times, become encrusted with so many customs and conventions that the jewel was lost in the setting. Outward compliance with externalities of the law took the place of the engagement of the whole person to the living God.[3]

Over the years, this problem has become exacerbated because everything in Judaism has been turned into a halakhic issue.

Unknown Landscapes

The future *posek* must reverse this crisis. He can do so only if he is touched by something much larger than himself. It is entirely impossible to *pasken* (render a halakhic ruling) when his own soul is cold and all he does is go by the book. He must live the Divine, and the Divine must emerge from his decisions. To paraphrase Heschel: The *posek* must feel more than he understands in order to understand more than he grasps. He must touch Heaven while standing with both his feet on the ground, similar to what takes place when one hears the music of Bach, Mozart, or Beethoven, and suddenly feels that he is taken on a journey to unknown landscapes. I would even suggest that some *posekim* should actually listen to this kind of heavenly music while contemplating halakhic problems presented to them. It will broaden their minds and hearts, and they will see a world emerging that opens halakhic possibilities they never contemplated before. They will sense God's presence, because music sets the soul free and evokes in us wonder about who we are and what we live for. As Swiss Protestant theologian Karl Barth once wrote, "Whether the angels play only Bach in praising God, I am not quite sure; I am sure, however, that *en famille* they play Mozart."[4]

No Legalism

It is the *posek*'s task to ensure that Judaism is not identified only with legalism. There is an entire religious world *beyond* halakha—one of *aggada*, philosophy, deep emotional experiences, devotion, and often unfinalized beliefs. Shouldn't these be part of the process of deciding how halakha is to be applied? The task of halakha has always been to ensure that Judaism does not evaporate into a utopian reverie, a superficial spiritualism. But the facts on the ground suggest something entirely different. Judaism has developed in a way that has destroyed the delicate balance between law and spirit, and it has turned into a type of sacred behaviorism. Halakha is supposed to be the practical upshot of even unfinalized beliefs. Judaism was never supposed to become a religion that is paralyzed in its awe of rigid tradition. It is a fluid liquid that must be transformed

into a solid substance so as to enable the Jew to act. It must chill the heated steel of exalted ideas and turn them into pragmatic deeds without allowing the inner heat to cool off entirely.

Halakha is the midwife that assists in the birth of not only answers but also profound spiritual questions created by that very halakha. As such, we must ensure that the *Posek haDor* does not turn into someone who gives automatic answers on the spot. Instead, he should walk the person through a landscape in which these questions are properly discussed.

The Wife of the *Posek*

It is high time that a group of women, particularly the wives of *posekim*, be deeply involved in certain halakhic decisions when they touch on emotions and social conditions that they may understand better than the *posek*/husband. Why do we almost never hear about the wife of the *Posek haDor*, her wisdom, and especially the sacrifice entailed in being married to such a great man who is needed by so many and who often has little time for his own family?[5]

Today's *Posek haDor* is often absolutely sure of the truth of his religion, but not informed or aware of the many challenges today's world presents to religious faith and Judaism. How could such a person be able to understand the many issues of people who live in religious doubt? Furthermore, the *posek* must sincerely appreciate the plight and pain of the confused teenager, the Jewish Ethiopian, the bereaved parent, the struggling religious homosexual, the child of a mixed marriage with only a Jewish father, even the Christian or Buddhist who has an affinity for Judaism and asks for guidance.

The Need for Advice

Is there anyone in this world who has all the qualities necessary to singlehandedly rule on these matters? It is entirely unfair and extremely dangerous to ask *one* person, however pious and wise, to adequately respond to all these issues. It requires teamwork with fellow rabbis and teachers, who may not be as learned in halakha but are much more familiar with many of the problems of which the

Posek haDor may not be aware. The *Posek haDo*r should be advised by a team of highly experienced professionals—psychologists, social workers, scientists, and even poets and musicians—before giving a ruling, so as to prevent major pitfalls. Halakha should be decided by consensus (as was once the case with the Sanhedrin) instead of by one person, even if he is the greatest. Centralized authority has become a dangerous matter. It may be wise to allow people, with some guidance, to decide on their own after having heard all the halakhic views and spiritual dimensions of their question.

New Torah Ideas and Not the Vatican

Posekim should encourage new Torah ideas and shun the denunciation of those books that try to bring religion and science together in harmony. Instead of banning them, as the Vatican used to do in former times, they should encourage these works. In the last few years, powerful rabbis have tried to prevent books from being published, or have condemned them, because they did not agree with their content, claiming them to contain heresy. In their ignorance, they tried to ban them and their authors, causing a terrible *hillul Hashem* (desecration of God's name) after secular newspapers were informed of these condemnations and ridiculed them, since they indicated a total lack of scientific knowledge on the part of those who signed and endorsed these bans. Some of these great rabbis should stop the banning and instead learn to offer scientific and philosophical solutions to possible conflicts between Torah, science, and philosophy. But to do so, they need to acquire enough knowledge! What is the point of labeling certain ideas as heresy when one does not have the knowledge to understand the issues involved? In any case, bans and inquisitions have no place in Judaism.

The *Posek haDor* must have shoulders broad enough to carry and appreciate different worldviews, including Zionist, non-Zionist, ultra-Orthodox and Modern Orthodox. And he must ensure that all these denominations feel his impartiality and his allowance of space for their varied ideologies. Perhaps he could even have an open ear for Reform and Conservative Judaism and realize that many of their adherents are serious about their religion, even though he would not agree with these movements. And when he disagrees, he should be sophisticated enough to explain why he indeed differs.

A true *posek* should visit women's shelters, speak personally with abused women and children, and perhaps periodically deny himself food and drink so that he

feels the real horror of poverty and rejection. Unless he is a very sensitive soul, he should perhaps get himself hospitalized and spend time observing and even experiencing the lives of people who are incapable of leaving their beds. They are in the hands of doctors and nurses who do not always deal with their patients in an adequately compassionate manner, whether due to lack of time, insensitivity, or some other reason. He should also carefully listen to the complaints, problems, and frustrations of the medical staff.

The *Posek* Should Go into Exile

Before dealing with the question of *agunot*[6] and the refusal of husbands to grant their wives a *get* (writ of divorce), it would perhaps be a good idea for the *posek* to leave his wife for a period of time (with her consent, of course) and live in total loneliness, so as to understand what it means to live in utter silence and have no life partner.

Above all, it is the *Posek haDor*'s responsibility to narrow the serious gap between the ultra-Orthodox and the rest of Israeli society, and to come up with creative halakhic solutions that will boggle the minds of all branches of Jewry.

Posekim must be people who will propose unprecedented solutions for the status of the tens of thousands of non-Jews with Jewish roots living in Israel. They must ensure that courses on Judaism are so attractive that halakha becomes irresistible. They should instruct their students to welcome these people with open arms, knowing quite well that otherwise we will be confronted with a huge problem of intermarriage in Israel, which threatens the very existence of the Jewish state.

The *posek*'s farsighted and long-term view must ensure that major problems, such as the exemption of yeshiva students from army service, will be resolved once and for all.

Over nearly 2,000 years of exile, Jewish law has developed into a "waiting mode" in which it has become the great "Preserver of the Precepts." It has been protective and defensive, and mainly committed to conformity, in order to ensure the survival of Judaism and the Jews who were surrounded by a non-Jewish, mostly hostile society. It became a "*galut halakha*"—an exilic code—in which the Torah sometimes became overly stultified. It may have worked in the Diaspora, but it can no longer offer sufficient guidance in today's world and in Israel.[7]

The State of Israel is the great catalyst for this new situation, which we have not experienced during the past 2,000 years. Consequently, we are in dire need of "prophetic halakha," in which not only the rules of halakha are applied, but also the perspectives of our prophets who spoke of burning social and ethical issues. This should be combined with a melodious spiritual resonance that introduces new points of view on genuine and deep religiosity.

Isn't it time to leave the *final* codification of Jewish law behind us; to unfreeze halakha and begin reading between the lines of the Talmud to recapture halakha's authentic nature?

To Be a Conductor of an Orchestra

To be an arbiter of Jewish law is to be the conductor of an orchestra. It is not coercion, but persuasion that makes it possible for the other to hear the beauty of the music and to accept a halakhic decision, just as one would willingly listen to the interpretation of a conductor—because one is deeply inspired.

To be a *posek* means to be a person of unprecedented courage; one who is willing to initiate a spiritual storm that will shake up the entire Jewish community. A storm that will free conventional and codified halakha from the sandbank in which it has been stuck. In a revolutionary shift, *posekim* should lead the ship of Torah, in full sail, right into the heart of the Jewish nation, creating such a shock that it will take days, weeks, or even months before it is able to get back on its feet. With knives between their teeth, like the prophets of biblical days, these great halakhic arbiters, of impeccable an uncompromising conduct, should create a religious uproar that will scare the moral wits out of both secular and religious Jews and weigh heavily on their souls.

To Be Feared and to Be Loved

Posekim should not be "honored," "valued," or "well-respected," as they are now. As men of truth, they should be both feared and deeply loved. Jews of all backgrounds should be shaking in their shoes at the thought of meeting them, while simultaneously being incapable of staying away from their towering,

fascinating, and above all, warm personalities.

Halakhic decision-making is a great art. The *posek* should never forget that he is the soil in which the halakha is to grow, while the Torah is the seed and God is the sun.[8]

We are in need of decentralized rabbinical authority in which many more rabbis will have a personal relationship with their flock and consequently be able to respond to the often difficult and very personal questions their followers are asking. There are no longer such unusual great rabbis who know the art of reading people's minds and hearts without having a personal relationship with them. This was exactly the point that Yitro made when he told his son-in-law Moshe Rabbeinu to appoint ministers "as leaders of thousands, leaders of hundreds, leaders of fifties, and leaders of tens."[9] Only the major cases would be brought to a giant authority like Moshe. But alas, such leaders no longer exist.

We should be very thankful that we witness the disintegration of rabbinical authority in our days. Nothing could be worse for Judaism and the Jewish people than having rabbis who are admired as great spiritual halakhic leaders when for the most part they are not. We will witness, slowly but surely, the rise of a completely new rabbinical world, which will give us more reason to be proud Jews and live a spiritual halakhic life. Yes, it will take time—but it will surely happen.

Perhaps our future rabbis should first listen to the heavenly music of Bach, Mozart, and Beethoven, after which they will be able to render a *truthful* halakhic decision. It might do wonders!

[1] The concept of *Daat Torah* is highly questionable, and in fact incompatible with Jewish tradition. Too many rabbis whose *Daat Torah* is accepted contradict each other in many profound and disturbing ways, which makes a farce of the whole idea. See the highly critical article by Lawrence Kaplan, "Daas Torah: A Modern Conception of Rabbinic Authority" in *Rabbinic Authority and Personal Autonomy*, ed. Moshe Z. Sokol (Northvale, NJ: Jason Aronson, 1992), 1–60. For a general overview of the doctrine of *Daat Torah*, see Alfred S. Cohen "Daat Torah," *Journal of Halakha and Contemporary Society* 45 (Spring 2003): 67–105; Benjamin Brown, "Jewish Political Theology: The Doctrine of Da'at Torah as a Case Study,"

Harvard Theological Review 107, no. 3 (2014): 255–289. See also the series of lectures and accompanying source sheets by Rabbi Anthony Manning entitled "Da'at Torah and Rabbinic Authority," 2017, http://www.rabbimanning.com/index.php/audio-shiurim/daat-torah/. I would suggest that there is something we can call *Ruah haTorah*, according to which differing opinions are stated, which are all rooted in diverse readings of our traditional rabbinic literature. This is a beautiful example of *elu veElu*. See *Eruvin* 13b.

[2] See Abraham Joshua Heschel, *The Earth Is the Lord's: The Inner World of the Jew in East Europe* (NY: Farrar, Straus and Giroux, 1978), 62–63.

[3] Abraham Joshua Heschel, *God in Search of Man: A Philosophy of Judaism* (NY: Farrar, Straus and Cudahy, 1955), 326.

[4] Karl Barth, "A Letter of Thanks to Mozart," from the Round Robin in the weekly supplement of the *Luzerner Neuesten Nachrichten*, Jan. 21, 1956. This is also quoted in "Selections from Barth's Writings," *New York Times*, Dec. 11, 1968.

[5]ArtScroll Publications did publish a book about the wife of Rabbi Chaim Kanievsky, well known leader and halakhic authority in Israel's Hareidi community: Naftali Weinberger, Naomi Weinberger, and Nina Indig, *Rebbetzin Kanievsky: A Legendary Mother to All* (NY: Mesorah Publications, 2012). But this is a drop in the bucket to what should and could be done, and it is entirely unclear whether Mrs. Kanievsky was involved in any halakhic decision-making.

[6] An *aguna* [*agunot* pl.] is a Jewish woman who is chained to her marriage because her husband is missing or refuses to give her a *get*.

[7] See Eliezer Berkovits, *Ha-Halakha, Koha ve-Tafkida* (Yerushalayim: Mossad HaRav Kook, 1981); English version, *Not in Heaven: The Nature and Function of Halakha* (NY: Ktav, 1983).

[8] Heschel, *God in Search of Man*, 274. See Samuel H. Dresner, *Heschel, Hasidism, and Halakha* (NY: Fordham University Press, 2002), 108.

[9] *Shemot* 18:21.