Correspondence: Eli Haddad and Rabbi Dr. Nathan Lopes Cardozo on Reviving the Halakhic Process

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To Rabbi Dr. Nathan Lopes Cardozo:

Dear Rabbi:

Your article the Spring 2010 issue of Conversations on “The Nature and Function of Halakha in Relation to Autonomous Religiosity” has inspired quite a bit of discussion in our family. Your comments have hit squarely home and crystallize the religious anomie of several of our recently married children. You issued a passionate call for responsible rabbinic leadership to meet the challenges of a less-than-dynamic halakhic process. This is vital to the authentic continuity of our traditions. Please grant me a few moments for a layman’s reflections on this matter.

Halakhic decision-making, since the sealing of the Talmud by Ravina and Rav Ashei in the fifth century C.E., has always been the province of local rabbinic authorities. The subtleties required for rendering the decision of complex issues can only be appreciated by the local Rabbi. The local socio-cultural context provides the framework for a proper and relevant understanding of the issues involved. This feature of our halakhic process has kept our oral law perpetually

dynamic and eternally relevant. The application of legal principles to changing local circumstance and nuance demands continuous adaptation. What may be right for one local community at a particular time and place may not necessarily be right for another congregation at the same time but in another region or country. How the values and principles of Torah are applied depends on the subtleties of social context.

The convergence of several unique factors in the broad social context of our information age has indeed bred the paralysis of halakhic evolution. To borrow a term from a popular author and journalist, I call these factors "flatteners"—"Halakhic Flatteners"

1. The emergence of the "professional rabbi" in combination with other flatteners detailed below is probably the most important factor. The Sephardic tradition as detailed by Maimonides calls for community rabbis to serve the local community while pursuing their own professional or commercial career goals. Accepting fees for formal positions as "judge" or halakhic decisor was frowned upon. Yes, valid arguments against that position are made for today's rabbinic leaders, especially in a world that is increasingly specialized. However, Maimonides' point needs to be understood. The politics of deciding how to apply law need to be removed—decisions have to be rendered with complete INDEPENDENCE. The current legal decisions of the "professional rabbi" are not and cannot be free of political considerations. The dictates of serving synagogue boards as well as of supporting large yeshiva study centers promotes the practice of what we can label "political/commercial rabbinics" rather than practical rabbinics. Halakhic decision making becomes hostage to the necessity of maintaining crowd/communal popularity and raising money for rabbinic institutions to sustain salaried rabbinic positions rather than what may be necessarily "legally correct."

2. Instant global communication - Any creative or innovative practice of any remote community is now instantly communicated. It is then subject to analysis and critique by the "professional rabbis" whose interest may very likely be the promotion of their own authority, their own ideology and their own local and vocal constituencies. The political and peer pressure of e-mails, blogs and the internet can suffocate innovation and inhibit the correct application of law to circumstances that may demand a different rabbinic approach than the norm. Flat and politicized worlds cannot accommodate the flexibilities needed for dealing with the subtleties of local social context.

3. Mass education—With lifestyles focused on leisure rather than survival, more than ever before, more people are engaging in religious study. This establishes an

exciting base for intellectual ferment and the possibility of a true Jewish Renaissance—unseen for centuries. However, there is nothing more dangerous than a little knowledge, especially when politicized in a world of instant communication. When all of these flatteners combine with the next flattener, the results are explosive.

4. The revolt against secularism and the concurrent rise of religious fundamentalism. This is an understandable reaction to the excesses of an indulgent society and an amoral culture. The constant bombardment of the individual with anti-traditional messages through every media portal can provide a justifiable basis for isolationism in ghettos. It is a rather natural reaction to the excesses of the age of greed and materialism (the 1980s and 1990s) and our new, in the words of President Obama, “culture of irresponsibility.”

5. The rate of change of the social condition has quickened. Women are now, for the most part, treated as equal in ability and opportunity to men. The nuclear family is under siege. Revolutions in the fields of medical and life sciences pose serious ethical and halakhic dilemmas. The major institutions that dominated society for millennia are withering. Indeed, the very premises of traditional cultural values are seriously challenged. Before the twentieth century, history was defined mostly by political and religious institutions. In the past century, this paradigm has changed. Technology, more than ever, is rapidly changing the institutional landscape. (an example: The Mideast revolutions and social media). In order to remain relevant, halakha must address these major and continuously changing social dynamics.

6. The paranoia in the Orthodox world created by Conservative and Reform Judaism (as well as the overwhelming success of assimilation.) The success of alternate forms of Judaism in nineteenth-century Europe and later in America has created a charged atmosphere among Orthodox Rabbinic circles that promotes instant overreaction to any creative or lenient halakhic decision. The defense of “tradition,” is paramount, whether the suggested practice or halakhic ruling even defies Torah law itself.

These six convergent forces have contributed to the paralysis of the world of halakha. Set within this petrifying framework, the current method of rabbinic decision making cannot address rapidly changing general and local needs. It cannot address subtleties and shies away from confronting the serious moral dilemmas that accompany a world changing faster than ever. It loses elasticity as well as its dynamic capability. As we have stated, it is subject to the many political/commercial dictates of a centralized and remote Ivory Tower of rabbinic

authority, most of whose leaders have retreated into the world of Fundamentalism, where change is anathema. And those Rabbis who do attempt to resolve burning issues or deal with local needs are themselves burned in the process. Just look at the reactions to Rabbi Rackman, a”h,” on the aguna issue or Rabbi Avi Weiss on just about any issue.

Hence, Rabbi Cardozo, halakhic paralysis.

I would like to suggest that the solution to halakhic paralysis has to be halakhic. I propose that we respect the legal process set in place after the Talmud was sealed in the fifth century. The Rabbis determined that halakha must be locally applied; kal vaHomer (how much more so) in a world where the rates of change vary in its different social and local contexts, However, the current definition of a “local community” must be understood in terms of new 21st century understandings. Communities are no longer merely small towns, shtetls or even local city neighborhoods. Communities are today defined as groups of individuals with common interest. Mention the word “community” today and most people think of the concept of virtual community, social media, Facebook, and web blogs. In an age of leisure and mass transportation, mass education and global communication, I suggest that this definition be broadened.

The traditional physical neighborhoods of major urban centers and suburban enclaves can no longer be considered exclusively as local communities. Communities are now defined by activity or interest rather than exclusively by geography. There are gym and health club communities, golf clubs, dance clubs, and political clubs. Communal life itself previously was characterized by long hours of work, the nuclear non-working mother family, and a local house of worship. This image of a local community is history.

Therefore, the concept of halakhic rulings being rendered by LOCAL community rabbis must now respect the need for this expansion of the term “local community.”

Let me provide a concrete example:

Several years back I attended an unusual Saturday minyan on the Upper East Side of Manhattan. It was presented as an Orthodox service, where men and women sat separated by a mehitsah, in accordance with Orthodox custom. Otherwise, women were equal participants with men as Cantors, Torah readers and Torah olim. It felt funny to me at first, since my background is Sephardic Orthodox. I approached the young, bearded Orthodox Rabbi at the end of the

service and inquired how he could halakhically justify this type of service. He answered that for this group, the egalitarian activity of the women is halakhically acceptable. He explained that the traditional reason of not allowing women to participate in the services is due to the concept of “kavod tsibbur,” or the fact that male congregants would not respect women as they would men, and that involving a woman in any part of the service would detract from the majesty of the service. This particular community of individuals defined their attendance at that minyan by their commitment to egalitarian principles. Therefore, the issue of kavod tsibbur, preventing women from participation alongside men in their minyan, just did not apply.

Here we have the halakhic process totally respected with complete authenticity but non-traditional practice.

Perhaps the evolution of halakha, which eternalizes our Torah and its values, has to respect the new expanded definition of “community” and allow the time honored practice of having “local” rabbis properly posek for their new communities.

Consider the results of an exposure of our new young Jewish “activity/interest” communities to halakhic principles and their new “local” and contemporary application (as to why they might differ from other halakhic communities). This would not only inspire active inter and intra community debate, but stimulate new understandings of halakha and a new appreciation for committing and living our sacred halakha directed lifestyle.

In addition to a re-definition of “local community,” perhaps our leading rabbis should consider the use of twenty-first century technology to mitigate or “unflatten” some of our previously detailed “flatteners.” Perhaps our leading rabbis can develop a “Virtual Sanhedrin.” By that I suggest the development of a secure blog site where rabbis who share a common philosophy and respect for each other, can debate issues honestly, openly and in the cool, calm medium of a confidential and secure blog site, with controlled access only by this Rabbinic group . Furthermore, i suggest that the debates conducted over this web blog be done anonymously, with specific reference numbers assigned to each rabbi who would present their issues by numerical code. For important issues, this medium can provide the time to flesh out complications and develop more authentic legal rulings. The flatteners of rabbinic commercial/political issues, of larger than life personalities, and of instant publicity would be much more controlled. Real issues can be thoughtfully addressed and more honestly debated. This healthier debate process will result in more meaningful halakhic consensus and decision making.

The fact that decisions are arrived at anonymously by group consensus will also provide political cover for any specific congregational or professional rabbi. I think the Rabbis of the Babylonian Academies, would have loved these incredible modern tools of communication for enhanced debate.

Perhaps this very same communication technology can be used to promote learning and to stimulate debate amongst active and involved community laymen. The e-mailing of “halakhic issue alerts” from the local community rabbi can become:
1. a terrific teaching tool
2. a confidential polling tool for the Rabbi to feel out public opinion prior to issuing local decisions.
(a halakhic ruling should not be openly promoted if the community would not respect it :
ex. A young adult singles mixed dancing in Orthodox synagogues during the 1950s and 1960s)
3. a community energizer on large, common and serious issues.

Imagine the ferment and excitement generated by exploring an issue like “organ donation.”
(Fragile—handle with care)

Indeed, in a rapidly evolving, technologically developed world, certain halakhic questions require specific technical expertise. Here, perhaps, rabbis of like philosophy and mutual respect should consider establishing virtual panels of specialists to deal with technical issues. Let us call this “the specialist blog.”

The panels can debate internally (a la the previous “virtual Sanhedrin” model) and, in turn, e-mail the rabbi who faces the difficult question.

I am sure this type of process currently functions in an informal manner. Why not formalize it and publicize its structure to the group of rabbis of like philosophy. I can suggest panels on:
1. Medically Assisted Conception and Birth
2. Living Wills and the Ethics of Artificial Life Support
3. The Digital Home on Shabbat

Lastly, and rather simply, why not utilize the medium of large flat screen streaming video and or DVD to present the positions and/or debates of rabbinic Superstars. Imagine a remote far flung community gathering in a synagogue to hear a presentation of Rabbi Jonathan Sacks on Pluralism and its impact on

halakha.

We have here several 21st century platforms that can truly energize local synagogue life as well as stimulate adult learning and commitment to a relevant halakhic process.
If I may summarize some of these ideas:
a. an expansion of the term “local community”
b. the “Virtual Sanhedrin”
c. the “specialist” blog
c. “Halakhic Issue Alerts”
d. the “Streaming Superstar”

These simple ideas can be part of an overall process to liberate halakha from its paralyzing flatteners. Rabbi Riskin offers a wonderful spin to the classic Talmudic episode of “the Tanur of Achnai.” This story deals with halakhic authority and ends with God chuckling as His support for the minority opinion on a halakhic issue is overturned by a rabbinic court. The classic Divine response is “Nitzhuni Banai”—“My children have defeated my argument.” Rabbi Riskin answers that perhaps we should read the text as “Netzahuni Banai “—as God saying “You have eternalized me”—that by making law subject to rabbinic decision making “You have kept my law eternally relevant.”

Rabbi Cardozo, we salute your inspired call to restore halakhic dynamism. As you have pleaded so forcefully, our rabbinic leadership must respond now with new methods of decision making to keep our Torah eternally relevant.

Response to Eli Haddad:

Dear Eli,
I read your observations with great interest. While I fully agree with your thesis that halakha has been flattened for all the reasons you give, and while I admire the solutions you suggest, I believe there is another, much more fundamental problem we need to deal with. Unless we do, your solutions will not have the result you so desperately seek.

We are confronted with a terrible misunderstanding of what halakha is really all about and what it wants to accomplish.
It is not just on the practical level that halakha is flattened, but also on the ideological, religious level. We have separated halakha from a conscious awareness of God. Our halakhic living has ignored Him. We are more concerned about the specifics of halakha than we are about our existential relationship with

God. No doubt this is partially the fault of the halakhic process itself. Even the Sages, when discussing these issues, rarely mention God in their conversation, making it very legal and often dry in a religious sense. The reason for this is obvious. There was no need to mention God in all these debates because they were thoroughly touched by His presence, just as water touches every part of our body while we are swimming. One does not have to mention water when completely immersed in it. God was the great background music to anything the Sages felt and said. In their view God was a challenge, not a mere notion. They had a trembling sense of the "hereness" of God. They realized that they were more known by God than God could ever be known by them.

In modern times, this religious experience has been lost on us. We study Talmud and halakha in ways that have been deeply affected by the secular environment in which we live. God-consciousness has left us. The majority of us are no longer God-intoxicated. Most if not all of our halakhic authorities have also fallen victim to this sad situation without even being aware of it. They decide on halakhic matters while God is not actively present. This does not mean that they do not believe in God or that they have no yirath shamayim, but it does mean that they are not stirred by His presence while dealing with halakhic issues. How often is God mentioned in sheeloth u-teshuvoth?

One needs to have a religious experience while deciding the halakha. Rabbis do not realize that one can only render a halakhic decision while simultaneously experiencing the wonder of life, the astonishment of existence and the marvel of Judaism. halakha can only be decided on and lived when we ask the question: How are we able to, even dare to, live in His presence? Halakha is a protest against taking life for granted. One of its aims is to make us aware that there is no commonplace, no moment of insignificance, and no deed of triviality. Halakha is the attempt to undo the attitude of "everydayness," but it can only work when we are fully conscious of this impediment and realize that there is no way to understand the meaning of halakha unless we make this goal our most important concern. If the posek (halakhic arbiter) does not realize that this is the function of the halakha and that this should be his ultimate goal when making a decision, his attempt to lay down the halakha is futile.

The problem we face is not realizing that halakhic living may become, if it hasn't already, a form of avodah zarah (idol-worship). When we think that by following halakhic demands we will automatically draw closer to God, we are guilty of self-deception. We do not realize that we often use halakha as a way to escape Him. We believe that as long as we are living a halakhic life we do not have to make a

supreme effort to draw closer to Him through the development of our God-consciousness. But this cannot be done by halakha. It needs to come from awe, from radical amazement, as Abraham Joshua Heschel called it. Only then is the halakha able to develop and deepen these notions.

This, however, is no longer part of Jewish Education. We have allowed the spirit of halakha to be flattened and have incorporated this dullness into the way we teach our children Judaism. We have made Judaism common instead of an astonishing experience. No wonder many of our young people drop their Judaism!

Only after we have cultivated this God-awareness can we start speaking about proper halakhic observance. Its goal is to take this cognizance and introduce it into every level of our lives. The fact that we see an unhealthy emphasis on rituals, but a disregard for matters that relate to ethical standards, proves my point. Violence, a severe dislike for non-Jews, and financial corruption within the Orthodox community, all of which are not even properly and fiercely condemned by our rabbinical authorities, are the obvious result of this escape from God in the name of halakha. If Orthodox Jews would really experience the awesome presence of God, how would it be possible for them to engage in these practices? (Is it not most remarkable that rabbis who suggest slight changes in Jewish rituals for the sake of greater religious devotion are condemned as heretics and as non-Orthodox, while those so-called Orthodox Jews who violate major tenets on the ethical side of Judaism are still considered to be Orthodox?)

When conversing with yeshiva students I often ask them how many years they have spent learning in yeshiva and how many masekhtot (talmudic tractates) they have studied. Once they tell me that they have mastered a good portion of the Talmud, I ask them what they would answer if a secular Jew, or a non-Jew, would ask them why they are religious. Nearly all of the students respond in total indignation and are completely taken back by this question. They have no answer. When I ask them how is it possible that after so many years of intensive study of religious texts they are still incapable of responding, the usual answer I receive is they have never thought about these questions, nor have their teachers ever discussed these matters with them. Topics such as religion, God and the meaning of life are taboo in many yeshivoth. The half hour spent on mussar literature is, for the most part, nothing but lip service. These topics are treated as hukath hagoyim, meant for religious non-Jews, and too inferior for Jews to discuss. On several occasions I have challenged their teachers or rashei yeshivoth about this. Most of them, although not all, avoided my questions by telling me that more gemara learning or “another tosafoth” would do the trick. They were sincerely

convinced that this was the solution to the problem. When I showed them the inadequacy of such an answer and kept pressuring them, it became crystal clear that they themselves were deadly scared of these topics. The policy was to ignore these issues and bury one's head in the sand. When their students abandon yeshiva and, in today's parlance, "go off the derekh," they are totally surprised. But is this not obvious? What else should we expect?

God's voice needs to be heard rising from the text, but we have long stopped teaching our students to hear it. It has been replaced with ceremonies, "observance" and humroth (stringencies), but not with holy deeds. God is of no importance unless He is of supreme importance, said Heschel.

In fact, many yeshivoth will skip—and not without pride—all non-halakhic texts, such as the aggadoth, which in fact deal with the most important dimension of halakhic living—the religious transformational purpose of the halakha. By ignoring these texts, they are sending a message to their students, not only that this part of the Talmud is inferior but that authentic religiosity is of little value. Teachers do not seem to realize that although halakha may be able to inform a man how to act in any given situation, it cannot provide insight into the quality of a given act, nor can it provide a sense of spiritual change that is the result of the performance of, or adherence to, a specific dictate. The power of aggadic and other non-halakhic material is in preventing mechanical observance and freeing man's spirit, as well as in suggesting what one's religious aspirations should be all about. Halakha is only the minimum of these religious aspirations. Religious non-halakhic material allows the unseen to enter the visible world and was formulated to give man the ability to go beyond the realms of the definable, perceivable and demonstrable.

Methods such as the Brisker approach to Talmud learning—today immensely popular in many yeshivoth—have in fact made this experience nearly impossible. While "hakiroth" and even "pilpul" may give spice to the discussion, they are unable to draw the student's attention to the existential meaning of what religiously needs to be accomplished through the engagement with these texts. This is a tragedy of the first order, for which Orthodoxy pays a heavy price. Precisely that which needs to be its most important goal has been totally dismissed and buried under the sand of halakhic discourse.

Another most important issue, which should be central to halakhic conversation, is the Jews' obligation to be "a light unto the nations." The Jewish people have been called upon by God to be the instrument through which He enters into the lives of all people. The universal purpose of Am Yisrael is to inspire and to

transform. This has serious consequences for how halakha should be applied and, above all, how it should be taught. Nearly no halakhic authority seems to make this a central point when dealing with halakhic issues. Most halakha is decided by focusing solely on the exclusive needs of the Jewish people. Universalistic issues are ignored. While some profound Hassidic thinkers and people like Chief Rabbi Avraham Yitzhak Kook dealt with these issues when writing non-halakhic works, I can think of only Hakham Benzion Uziel, the former Sephardi Chief Rabbi of Israel, who incorporated the universalistic mission as expressed by the prophets in his way of halakhic decision making. (See also Rabbi Dr. Marc D. Angel's book: Loving Truth and Peace: The Grand Religious Worldview of Rabbi Benzion Uziel, Jason Aronson, Inc., Northvale, New Jersey, Jerusalem, 1999)

Most present-day halakha is self-centered and often under the pressures of our galuth experience and defensiveness. (See Rabbi Eliezer Berkovits's Hahalakha, Koha V'Tafkida.) What is urgently needed is prophetic halakha.

One of the most serious complaints by young searching Jews, when studying halakha, is the absence of the notion of mission and concern for the rest of mankind. This flattens the halakha in ways that do great damage to its very image.
All that is mentioned in this letter is only the tip of the iceberg. Mainstream halakhic Judaism will become more and more irrelevant in the years to come, except for a small but growing community of religious Jews. But the more they will dedicate their lives to halakha, the more the rest of our people will be detached from it, for the very reasons the religious Jews get more involved: the stabilization of and self-satisfaction with halakhic living. halakha has become a platitude instead of being a great spiritual challenge. Our thinking is behind the times.