

Foreign fire and halachic evolution

Shemini 5782/2022

The Chatam Sofer in his counter-revolution against early reform, created a slogan. He transformed the halachic ruling — [consumption of] the new [season's grain before the designated time] is forbidden by the Torah|| into a slogan opposing all innovation— the new is forbidden by the Torah.

I do not want to focus on elements of halachic innovation, but rather that notion of evolution and innovation as a topic of consideration despite specific examples, and more importantly the limits or parameters of such innovation and evolution.

In Parashat Shemini we read of the deaths of Aaron's two sons Nadav and Avihu¹. There are numerous ideas stated for the deaths of Aaron's sons; they drank, that Hashem was going to consecrate his mishkan with the ultimate kiddush Hashem.

But it is Rashi who brings down a Talmudic excerpt that is incredibly interesting. Rabbi Eliezer said: Aaron's sons died only because they rendered halachic decisions in the presence of Moses, their teacher².

The Talmud doesn't say that the decisions were wrong, that they were improper, that they went against the grain of the Torah, rather that they did so in a way that was lacking respect for the process of Torah development and evolution a direct contradiction to Pirkei Avot's opening Mishah³.

There was a process; Moshe receives and passes it on, and that pattern repeats itself through the generations. Each time it is interpreted and engaged with in different ways, with cultural and relevant nuance that is imperative in ensuring that our Torah is mayim Chayim, the waters of life. Always sustaining because they are always moving and flowing, reacting to the environment, like a river that changes its course. But always fluid.

Halacha was never meant to become stagnant. The Mishnah was never meant to be written down, but chazal reacted to their historical reality, so they codified the Oral Law in a way that mimicked the halachic process of evolution. The Mishnah includes dissenting opinions, the Talmud advances those opinions with further opinions, but also leaves room for indecision. With the end of Semicha, the formal process of appointing leaders, we see a slowed pace; the evolution of halacha continued, our siddurim were established, new customs and ideas debated, but it slowed.

The creation of both Rambam's Mishneh Torah, and Rabbi Yosef Karo's Shulchan Aruch was a direct challenge to the process of halachic evolution. In and of itself it was revolutionary and innovative. And both authors explain away their unorthodoxy by citing the initial difficulty of locating the source of a halacha within the Talmud and the additional difficulty of tracing that particular halacha's evolution through the vast, ever-expansive corpus of post-talmudic halachic literature. But this in and of itself was the seal by which halacha stopped modernising at its core.

Both the Rambam and R'Karo were met with resistance. Rabbi Luria, the Maharashal and his brother Rabbi Haim ben Betzalel. The three figures were very different from one another. Yet in their opposition to codification they shared three central, recurrent claims: an appeal to halachic authorities to return to the oft-indeterminate Talmud as the ultimate source of authority in their reasoned legal opinions, an emphasis on the uniqueness of each individual case, and an ascription of privileged status to the custom of the local community.

The Maharashal saw the stagnation of halacha, through the codification of law, as an issue of yeridah hadorot, the degradation of the generations. By codifying, we moved further and further away from the source of the evolutionary process of halacha. He argues for a renaissance of new halachic interpretation, fluidity of exploration and decision making, and the ability to react more authentically to the trials and tribulations of the world around us⁴.

This leads us to the present day.

We have a clearly defined set of process whereby halacha can and should evolve. However, we have moved so far from our source, that we have relegated this evolutionary process to being a partisan issue. We have moved the conversation away from the Mishnah and Talmud being a matter of teaching how to engage with halachic innovation, to it being improper to determine halacha from the Mishnah or Talmud. We have stagnated the issues, and we use the baseline of decision making as the Shulchan Aruch.

I am not advocating we do away with any of these, but rather ensuring we realise that has occurred.

What people are doing today in the area of innovation within halacha, especially the more controversial areas, is to go back to the source of our halachic process. To re establish a process whereby we can have conversations, debates, different conclusions. The hope would be that we mirror the actions of Beit Shammai and Beit Hillel – where we can inherently disagree with one another, yet still marry off our children despite those debates. If we know the parameters; that Torah laws are infallible, unchangeable, and that the process is designed to ensure authenticity, then we should be able to rise to the occasion an innovate while also maintaining unity across our people.

This leads me to the Parah Adumah⁵. The Sforno writes that it is baffling that the person who administers the purifications rites, become impure in the process⁶.

For me this has always been an interesting point. Here we have a purification process, whereby we see impurity come onto the person.

For me this is the same within halachic innovation and innovators. Those who argue for the evolution of halacha are oftentimes met with resistance, they themselves become impure. However, in an authentic process, whereby halacha responds to the ebbs and flows of the world around it, they are able to regain entry into the fold, their ideas are not the fiery destructive power originally perceived, and slowly slowly the facts on the ground change the reality.

We have a few roles in this process⁷. By learning, having humility, listening, accepting, and doing, we have the power to be part of the halachic process. One that has governed our people for millennia, and will do so for millennia going forward.