

WHAT IS 'AUTHENTIC' HALACHIC CHANGE?

MIZRACHI - FINCHLEY, APRIL 2026

1. How to face the confrontation between the text and the actual life situation, how to resolve the problems arising out of the confrontation, is the task of the *Torah Shebe'al Peh*, the Oral Law. This second Torah, ever since the days of Moses, handed down from generation to generation, accompanies the *Torah Shebiktav*, the Written Word, along its journey of realization in the innumerable concrete situations through which the Jewish people passes in the course of its history. It is the wisdom of Torah implementation in the daily life of the Jewish people. It makes the Torah *Torat Hayim* - living, teaching and relevant law.

R. Eliezer Berkovitz, Not In Heaven, Intro page xx

2. Kant was of the opinion that man knows he is duty-bound to obey a 'universal system of law' but does not understand the source of that law. Kant is able to write: "The supreme principle of morality I shall, therefore, call the principle of the autonomy of the will, to distinguish it from all other principles, which I shall call principles of heteronomy." Needless to say, a law commanded by God, usually referred to as theonomous, is one form of heteronomy.

The fact is that there is no such thing as *the* will of man. *Man* as a creator of his values just does not exist. There is no man in the abstract; there are only men each claiming the authority of the autonomous will. Autonomy thus degenerates into everyone's 'doing his own thing'. The result is social and international decadence.

If, then ... we concentrate on heteronomy in the sense of the revealed system of law, the confrontation between autonomy and theonomy appears in a new sense. It is the collision between a relativism that leads to social as well as international decadence and a barren fundamentalism that stifles human nature. In the morality of the covenant, theonomy and autonomy serve together a common purpose. The supreme principle of the law to which a man is subject is theonomous, its ultimate source of authority being the will of God; the interpretation of the law and its application to innumerable and forever-changing life situations are autonomous. Theonomy liberates the human will from the potentially destructive relativism of its subjectivity; human autonomy protects the absoluteness of the law against the occasional negative consequences of its time-alienated objectivity. Through halacha, the word from Sinai has become the way of life of the Jewish people throughout history.

R. Eliezer Berkovitz, Not In Heaven, pages 125-7

- When we talk about 'halachic change', what level of change do we envision?
- There are effectively 4 levels of halachic change.

A] FUNDAMENTAL CHANGE OF THE MITZVA/HALACHIC SYSTEM IN THE CHUMASH

3. א דבר ברור ומפורש בתורה, שהיא מצוה עומדת לעולם ולעולמי עולמים: אין לה לא שנוי, ולא גרעון ולא תוספת, שנאמר 'את כל הדבר, אשר אנכי מצוה אתכם אותו תשמרו, לעשות: לא תסף עליו, ולא תגרע ממנו' (דברים יא); ונאמר 'והגזלת לנו ולבנינו, עד עולם לעשות, את כל דברי התורה הזאת' (דברים כט:כח). הא למדת שכל דברי תורה, מצוין אנו לעשות עד עולם; וכן הוא אומר 'חזקת עולם לדורותיכם' (ויקרא ג'ו; ועוד שבעה מקומות), ונאמר 'לא בשמים, היא' (דברים ל"ב). הא למדת שאין נביא רשאי לחדש דבר, מעתה. לפיכך אם נעמד איש, בין מישראל בין מן האומות, ונעשה אות ומופת ולאמר 'שה' שלחו להוסיף מצוה, או לגרע מצוה, או לפרש במצוה מן המצוות פרוש שלא שמענו ממשה, או שאמר שאותן המצוות שנצטוו בהן ישראל אינן לעולם ולדורי דורות אלא מצוות לפי זמן היו הרי זה נביא שקר, שהרי בא להכחיש נבואתו של משה.

רמב"ם הל' יסודי התורה ט"א

It is clear and explicit in the Torah that it is God's commandment, remaining forever without change, addition, or subtraction, as Deuteronomy 13:1 states: "All these matters which I command to you, you shall be careful to perform. You may not add to it or subtract from it," and Deuteronomy 29:28 states: "What is revealed is for us and our children forever, to carry out all the words of this Torah." This teaches that we are commanded to fulfill all the Torah's directives forever. It is also said: "It is an everlasting statute for all your generations," and Deuteronomy 30:12 states: "It is not in the heavens." This teaches that a prophet can no longer add a new precept to the Torah. Therefore, if a person will arise, whether Jew or gentile, and perform a sign or wonder and say that God sent him to: a) add a mitzvah, b) subtract a mitzvah, c) explain a mitzvah in a manner which differs from the tradition received from Moses, or d) if he says that the mitzvot commanded to the Jews are not forever, but rather were given for a limited time, he is a false prophet. He comes to deny the prophecy of Moses. **Rambam Hilchot Yesodei HaTorah 9:1**

- The Rambam is dealing with 'ground-level' changes in the mitzvot - a 'New Covenant'.
- This would cover the Replacement Theory religions - Christianity and Islam.
- To what extent does this position of the Rambam apply even during the Messianic era?

4. אמר רב יוסף: זאת אומרת - מצות בטלות לעתיד לבא.

נדה סא:

Rav Yosef said: That means to say that the commandments will be cancelled in the future to come. **Bavli Nidda 61b**

- Note a fundamental disagreement between the Rambam (who understands that the system of mitzvot will NEVER be changed, even when Mashiach comes - see his 9th Ikar) and the kabbalistic approach of a 'Torah Chadasha' after Mashiach. However, even according to the Rambam, non-systematic change of halacha WILL occur once we have a Sanhedrin etc.
- To what extent do modern non-halachic movements derive their philosophical validity from a world-view based on an assumption that we now live in a 'New Age'?

B] THE SANHEDRIN AND OVERRIDING THE 'CHATIMAT HASHAS'

5. א בית דין הגדול שבירושלים הם עקר תורה שבפעל פה. והם עמודי ההוראה ומהם חק ומשפט יוצא לכל ישראל. ועליהם הבטיחה תורה שנאמר (דברים י"א) על פי התורה אשר יורוד - זו מצות עשה. וכל המצאמין במשה רבנו ובתורתו חייב לסמוך מעשה הדת עליהם ולשען עליה.

ב כל מי שאינו עושה כהוראתן עובר בלא תעשה שנאמר (דברים י"א) לא תסור מפל הדבר אשר יגידו לך ימין ושמאל....

רמב"ם הלכות ממרים פרק א הלכה א,

1 The Supreme Sanhedrin in Jerusalem are the essence of the Oral Law. They are the pillars of instruction from whom statutes and judgments issue forth for the entire Jewish people. Concerning them, the Torah promises (Deuteronomy 17:11): "You shall do according to the laws which they shall instruct you...." This is a positive commandment. Whoever believes in Moses and in his Torah is obligated to make all of his religious acts dependent on this court and to rely on them.

2 Any person who does not carry out their directives transgresses a negative commandment, as ibid. continues: "Do not deviate from any of the statements they relate to you, neither right nor left. **Rambam Hilchot Mamrim 1:1-2**

6. א בית דין הגדול שדרשו באחת מן המדות כפי מה שנראה בעיניהם שהדין כך ודנו דין. ועמד אחריהם בית דין אחר ונראה לו טעם אחר לסתור אותו. הרי זה סותר ודן כפי מה שנראה בעיניו. שנאמר (דברים י"ט) אל השפט אשר יהיה בימים ההם. אינך חייב ללכת אלא אחר בית דין שבדורך.

ב בית דין שגזרו גזרה או תקנו תקנה והנהיגו מנהג ופשוט הדבר בכל ישראל. ועמד אחריהם בית דין אחר ובקש לבטל דברים הראשונים ולעקר אותה התקנה והגזרה ואותו המנהג. אינו יכול עד שיהיה גדול מן הראשונים בחכמה ובמנין....

ה בית דין שנראה להן לגזר גזרה או לתקן תקנה או להנהיג מנהג צריכין להתלשב בדבר ולידע תחלה אם רב הצבור יכולין לעמוד בהן או אם אין יכולין לעמוד. ולעולם אין גוזרין גזרה על הצבור אלא אם כן רב הצבור יכולין לעמוד בה:

רמב"ם הלכות ממרים פרק ב הלכה א,ב,

1 When, using one of the principles of exegesis, the Supreme Sanhedrin derived a law through their perception of the matter and adjudicated a case accordingly, and afterwards, another court arose and they perceived another rationale on which basis, they would revoke the previous ruling, they may revoke it and rule according to their perception. This is reflected by Deuteronomy 17:9: "To the judge who will be in that age." This indicates that a person is obligated to follow only the court in his own generation.

2 The following rules apply when a court issued a decree, instituted an edict, or established a custom and this practice spread throughout the Jewish people and another court arose and sought to nullify the original order and eliminate the original edict, decree, or custom. The later court does not have this authority unless it surpasses the original court in wisdom and in its number of adherents.

5 When a court sees it necessary to issue a decree, institute an edict, or establish a custom, they must first contemplate the matter and see whether or not the majority of the community can uphold the practice. We never issue a decree on the community unless the majority of the community can uphold the practice. **Rambam Hilchot Mamrim 2:1-2,5**

7. רבי ורבי נתן סוף משנה, רב אשי ורבינא סוף הוראה.

בבא מציעא פו.

Rebbi [Yehuda HaNasi] and Rabbi Natan are the end of the Mishna. Rav Ashi and Ravina are the end of ruling. **Bavli Bava Metzia 86a**

8. תראי שחברו התלמוד הם רב אשי ורבינא וסיעתם ובימיהם נחתם התלמוד.

מבוא התלמוד לר' שמואל הנגיד

The two who wrote the Talmud are Rav Ashi and Ravina and those that helped team, and in their time the Talmud was sealed. **Mevo HaTalmud of R. Shmuel HaNagid**

9. כאשר מתו כל החכמים ע"ה שהאחרונים מהם רבינא ורב אשי וכבר נשלם התלמוד, הרי כל מי שעמד אחריו אין מטרתו אלא הבנת דבריהם שחברו בלבד, עליו אין להוסיף וממנו אין לגרוע.

הקדמת הרמב"ם למשנה

Once all the Sages had died, of whom the last were Ravina and Rav Ashi, the Talmud had already been completed. So the goal of all whom came after them was only to understand the words they that write. We do not add or subtract from it [the Talmud]. **Rambam Introduction to Mishne Torah.**

- The function of the halacha post-Talmud is to analyze and apply the psak of the Talmud.
- Rejection of the psak of the Talmud is a clear departure from the halachic system. How does this relate to the position of the Conservative Movement?
- Innovation is possible through interpretation of the Talmud in attempting to understand its conclusions (which are not always clear), but interpretation has limits!

Examples: - Innovation of the Ba'alei HaTosafot in halachot for which the reasons no longer apply in the modern world - eg mayim megulim, mayim achronim, dancing on Shabbat.
- Rav Moshe Feinstein on Chalav Yisrael.

- Why was there a Chatimat HaShas? 3 approaches: (i) Historic/Geo-political - Rambam; (ii) Religious: Yeridat HaDorot - Rav Sherira Gaon; Mystical: 2000 years of Torah - Chazon Ish.
- Under what circumstance is the Chatimat HaShas overruled. All opinions would agree that a new Sanhedrin would be able to make fundamental changes to the halachic principles in the Talmud. What other modern scenarios could justify a fundamental shift in halachic thinking?
- Post Shoa/existence of the State of Israel?¹
- The mass return to Israel?
- The majority of Jews living in Israel?
- Global interconnectedness/technological revolution?
- Examples of a psak which would clearly go against the Chatimat HaShas:-
 - to wear Tefillin on Shabbat
 - to remove the mechitza entirely from the synagogue.

C] HALACHIC INNOVATION WITHIN THE TALMUDIC PSAK

C1] THE MORE PERMISSIVE APPROACH - 'HALACHA KEBATRAI'

- The corollary of the 'Chatimat HaShas' is that every halachic ruling AFTER the Shas is in principle capable of being overruled by any other later authority, as long as that later authority does not reject the psak of the Talmud

10. מיהו י"א דאם נראה לדין ולבני דורו מכה ראיות מוכרחות שאין הדין כמו שהוזכר בפוסקים יכול לחלוק עליו מאחר שאינו נזכר בגמרא (טור בשם הרא"ש). **ביאור הגר"א** - דעל הגמ' אין ראיות להוסיף ולא לגרוע כ"ש לחלוק כמ"ש בפ' הפועלי רבינא ורב אשי סוף הוראה.

רמ"א שולחן ערוך חושן משפט הלכות דיינים סימן כה סעיף א וביאור הגר"א שם

Nevertheless, some take the [halachic] position that if it seems to a judge or others in their times, supported by clear proofs, that the law is not as stated by [other] authorities, he is permitted to disagree since this matter is not decided in the Talmud. (Commentary of Vilna Gaon - because we have no permission to add to or take away from [the Talmud], all the more so to argue with it. As it is stated - Ravina and Rav Ashi are the end of ruling). **Rema Shulchan Aruch Choshen Mishpat 25:1**

1. Modern voices in the orthodox community arguing for a rethink of some halachic principles include (i) R' Eliezer Berkovits (see Chapter 4 (Halacha in Our Time) of *Not in Heaven*, 2010 - Shalem Press; and (ii) R' Natan Lopez Cordozo - see <http://cardozoacademy.org/the-mary-russo-audio-file-library-2/> 'The Future of Halacha'. Many argue that such positions are in fact beyond the boundaries of legitimate orthodox hashkafa.

C2] THE MORE RESTRICTIVE APPROACH - 'ITMAR HILCHATA'

11. מעשה ועשה רבי כר' אליעזר, לאחר שנזכר אמר: כדי הוא ר' אליעזר לסמוך עליו בשעת הדחק. מאי לאחר שנזכר? ... דלא איתמר הילכתא לא כמר ולא כמר

נדה ט:

The was a case where Rebbi [Yehuda HaNasi] followed the view of R. Eliezer. After he was reminded, he said: "It is appropriate to rely on R. Eliezer in a pressing situation." What does 'after he was reminded' men? [He was reminded] that the halacha had not been definitively ruled one way or the other. **Bavli Nidda 9b**

12. סוף דבר ההוראה המקובלת מפי רבותינו אשר מפיהם אנו חיים כמו מרן הבית יוסף, המגן אברהם והמשנה ברורה ... היא הוראה מקוימת כמו מפי סנהדרין בלשכת הגזית

קובץ אגרות החזון איש - תורה מכתב מא

Ultimately, the accepted ruling of our Rabbanim, by whose word we live, such as the Beit Yosef, the Magen Avraham and the Mishna Berura ... are binding rulings as if they came from the Sanhedrin in the the Chamber of Hewn Stone [in the Temple]. **Chazon Ish, Torah Michtav 41**

C3] HALACHIC CHANGE IN THE FACE OF AN ESTABLISHED PSAK

- Under what circumstances can one 'make a case' for halachic change against an established psak?
- Can 'a case' be brought from rishonim 'within' the psak of the Talmud?

Examples:

- Teaching women Torah (against the psak of the Shulchan Aruch)
- Women wearing tefillin
- Women's Aliyot
- 'Partnership Minyanim'

- What makes a psak valid? Some important considerations:-

- Who is making it? Senior posek:
 - sensitivity to the process of psak
 - deep understanding (not just knowledge) of the sources
 - training (shimush) with the great poskim of previous generations - see below
 - responsibility for the broader implications for the halachic system and the Jewish people
 - ability for weigh the sources against each other
- Not junior posek:
 - basic training
 - knowledge of halachic sources from digital access/internet?
- Public/Private?
- External Agendas?
- Metahalachic issues?
 - Not strengthening the position of non-halachic movements
 - Not undermining the halachic process by creating false impressions/expectations eg 'where there is a Rabbinic will there is a halachic way'
 - Not undermining the authority of the poskim generally
 - Maintaining Jewish unity
 - Not alienating sectors of Jewish society (in particular women)
 - Not imposing on the community more than it can bear
- Hashkafic Issues?
 - How relevant to halacha is the changing reality of the modern world (eg men/women; Jews/non-Jews)?
 - How important is personal autonomy in the process of religious growth and authenticity? How does this weigh against 'Da'at Torah'?

13. אפילו קרא ושנה ולא שמש תלמידי חכמים הרי זה עם הארץ?

ברכות מז:

Even if a person learned Tanach and Mishna but had not learned closely under the Rabbis, he is considered an ignoramus. **Bavli Berachot 47b**

14. היכי דמי רשע ערום? עולא אמר: זה שקרא ושנה ולא שימש תלמידי חכמים.

סוטה כא:

What is the case of a devious and wicked person? Ula said: someone who has learned Tanach and Mishna but has not learned closely under the Rabbis. **Bavli Sota 21b**

15. פעם אחת היה לנו עגל של זבחי שלמים, והביאנוהו לעזרת נשים, וסמכו עליו נשים. לא מפני שסמיכה בנשים - אלא כדי לעשות נחת רוח לנשים.

חגיגה טז:

It happened once that we had a Shelamim calf [in the Temple] and they brought it to the Women's Courtyard and the women performed *semicha* on it, not because [we rule that] women are [included in the mitzva of] *semicha* - but to bring *nachat ruach* [satisfaction/fulfillment/gratification] to the women. **Bavli Chagiga 16b**

16. The discussion regarding women's tefilla groups has regrettably focused excessively on technical issues and legalities. It has been framed by limited halakhic queries such as: may the participants forgo tefilla be-tsubbur to attend these groups? May menstruant women touch sifrei Torah? Undoubtedly such technical perspectives and narrow questions are necessary to ensure our compliance with all minutiae of halakha. Torah, however, consists not only of halakhic details, but also of halakhic values. Unfortunately the latter have been neglected in the discussion concerning women's tefilla groups. When halakha is fragmented and truncated in such a fashion, it can be neither interpreted nor implemented correctly. The approach of Rav Soloveitchik zt"l differed. The Rav's consistent opposition to women's tefilla groups was dictated by halakhic values, not halakhic details.

Halakhic Values and Halakhic Decisions: Rav Soloveitchik's Pesak Regarding Women's Prayer Groups, R. Meyer Twersky Tradition, 32:3 Spring 1998²

17. In sum, halakha is a two-tiered system consisting of concrete, particularized commandments governing our actions as well as abstract, general imperatives governing the matrix of our actions. Some abstract imperatives focus exclusively on the elan of a specific *mitsva*, e.g., the commandment *Shabbaton* ensures the spiritual character of *Shabbat*. Others are all-encompassing, establishing universal values and standards of conduct; e.g. *kedoshim te-hiyu*. The Torah legislates not only actions, but also *de'ot* (ethical-moral-religious-intellectual dispositions). It prescribes ritual but also establishes boundaries for the concomitant religious experience.

ibid

18. וְעָשִׂיתָ הַיָּשָׁר וְהַטוֹב בְּעֵינֵי ה' לְמַעַן יִיטֵב לָךְ וּבָאתָ וִירְשָׁתָּ אֶת הָאָרֶץ הַטֹּבָה אֲשֶׁר נִשְׁבַּע ה' לְאַבְרָהָם:

דברים ויח

You must do the straight and the good in God's eyes so that He will be good to you and you will come to and inherit the good land that God swore to your forefathers. **Devarim 6:18**

19. ולרבותינו בזה מדרש יפה, אמרו זו פשרה ולפנים משורת הדין. והכוונה בזה, כי מתחלה אמר שתשמור חקותיו ועדותיו אשר לך, ועתה יאמר גם באשר לא לך תן דעתך לעשות הטוב והישר בעיניו, כי הוא אוהב הטוב והישר: וזה ענין גדול, לפי שאי אפשר להזכיר בחורה כל הנכונות האדם עם שכניו ורעיו וכל משאו ומתנו ותקוני הישוב והמדינות כלם, אבל אחרי שהזכיר מהם הרבה, כגון *לא תלך רגל, לא תקום ולא תטור, ולא תעמוד על דם רעך, לא תקלל חרש, מפני שיצא תקום, וכיוצא בזה*, חזר לומר בדרך כלל שיעשה הטוב והישר בכל דבר, עד שיכנס בזה הפשרה ולפנים משורת הדין.

רמב"ן שם

Our Rabbis have a beautiful Midrash on this verse. They have said: "[That which is right and good] refers to a compromise and going beyond the requirement of the letter of the law." The intent of this is as follows: At first He stated that you are to keep His statutes and His testimonies which He commanded you, and now he is stating that even where He has not commanded you, give thought, as well, to do what is good and right in His eyes, for He loves the good and the right. Now this is a great principle, for it is impossible to mention in the Torah all aspects of man's conduct

2. see http://www.torahweb.org/torah/special/2003/rwe_wtg.html#fn10

with his neighbors and friends, and all his various transactions, and the ordinances of all societies and countries. But since He mentioned many of them – such as, You must not go as a talebearer; You must not take vengeance, nor bear a grudge; You must not stand by the blood of your neighbor; You must not curse the deaf; You must stand before the elderly, and the like – He reverted to state in a general way that, in all matters, one should do what is good and right, including even compromise and, going beyond the requirements of the law. **Ramban ibid**

20. Now in recent months, a new practice has developed, where women don a Kippah, or a Talit and Tefillin during the time of the morning prayers service. They did not pose this question to the halachic adjudicators of our times
- Any individual who has merely studied in a Yeshiva can rule and adjudicate according to his own intellect – especially in our days where anything can be searched and found on the internet, in the Otzer HaChochma, or in the Responsa project of Bar Illan, and other such things. Utilizing these aforementioned methods, each person can thus make himself into a Talmid Chochom or a Morei Horaah. He can then rule even in the most stringent of matters as if he knew by himself all the sources and all the opinions
- I was shocked to see how otherwise intelligent people are engaging in pilpulim, vain pilpulim, dealing with whether or not women may voluntarily perform the Mitzvah of Tefillin (in the manner of “not commanded but fulfilling it anyway”). They have marshalled opinions both this way and that way, and judge things as if we were living in the period of the Tanach (as they cite precedence from Michal Bas Shaul), or in the period of the Tannaim (where the Tannaim debate regarding whether women may voluntarily lay on hands), or in the period of the Rishonim (who debated things regarding the practices of Rashi’s daughters). However, in the abundance of our sins we live in the year 5774 – in the time period of the rebellion of schismatic movements who fight the oral law. It is a time when this practice of [women] wearing Talis and Tefillin is found exclusively with Conservative Judaism, where their entire approach to halacha is founded upon the principle that it is permitted – even an obligation to change from the path of our traditions according to the whims and practices of “how the nation conducts itself” whenever there may be any trace of a source to the matter. It is this particular point which is the essential difference between them and the Orthodox.

Psak of Rav Herschel Schechter Feb 11 2014

21. Piskei Halacha are not rendered in an empty vacuum. Rather, they are made in contact with that generation. And in our generation, all the Tannaim, all the Rishonim, and all the Achronim would agree that such practice is decidedly forbidden so as not to emulate the schismatic movements, even though it may appear as a stringency (see the Mishna in Chulin 41a)
- And those who quote the expression, “Moshe received the Torah from Sinai,” continue with and passed it on to Yehoshua etc. They state, “We have in our hand a strong tradition as to how to render halacha.” But the field of halacha is not like an abandoned property where the first person who lays claim to it receives it, and whoever is stronger wins, or whoever publicizes his opinion first either through the newspapers or through the internet the halacha is like him. No. The matter is as it has been explained in the Midrashim – that one thousand walk into the Beis HaMidrash and one comes out suitable to rule in the area of halacha. That one individual is one who has interned for much time with his master. He received the words of Torah investing blood and soul. He is indeed married to the Torah – not just engaged to it.
- The expression that some of those who have permitted this utilize that “according to the technical halacha” a certain act is permitted, and that which people wish to prohibit it is because of “political considerations” is incorrect. For even a matter such as changing the mesorah – the traditions of the Jewish people is in and of itself an integral section of halacha. When one rules on “the donning of Tefillin for women” it is not enough to merely examine the ruling of the Shulchan Aruch in Hilchos Tefillin and in the sources there and treat it as a simple question. Rather, like any question in halacha, we must rule on the topic from all facets and perspectives. Not always will the ruling lay on that page in Shulchan Aruch that we had initially thought.
- All difficult questions such as this [ruling against an explicit Ramah in Shulchan Aruch is certainly a difficult question that certainly needs wide shoulders], certainly must be presented before Torah scholars who are Morei Horaah that have a wide knowledge in halacha. No mere musmach or local Rabbi, even one with the best of intentions, should express his opinion in a question such as this, and certainly not to publicize his private opinion through the media or the internet. For such a serious question applies to all of Klal Yisroel who are true to the Mesorah. Only leading Gedolei Horaah are permitted to decide upon these matters.
- Our complaint is not at all upon the women who have endeavored to fulfill this Mitzvah, rather it is upon the Rabbis (all of whom have received ordination from our Yeshiva) who proffered an erroneous opinion here, without consultation of their question to the Morei Horaah that they direct their questions toward regarding other matters.

D] CHANGE IN THE FACE OF AN ESTABLISHED MINHAG/MESORAH

• How does halachic practice develop when the new innovation is NOT against an clear established psak, but rather is something the Jewish people never did (or did in a different way) before?

- Examples:
 - Bat Mitzva
 - Women's connection with Sefer Torah eg dancing on Simchat Torah, taking around women's section of the shul before leyning, women-only services
 - Mechitza design in shuls (gallery, front/back, parallel seating)
 - Flowers at funerals
 - Changes to modern pronunciations
 - Changes inspired by Zionism - Hallel on Yom Ha'atzmaut, Prayer for the State of Israel
 - Women voting
 - Sermons in the vernacular
 - Organs in shuls
 - Using an iPhone to daven

• One can often try to make a halachic case against these issues but is that driven by other considerations?

22. יש טוענים נגד ההיתר של חגיגת הבת מצוה, משום שהוא נגד מנהג הדורות הקודמים, שלא נהגו מנהג זה. אבל באמת אין זו טענה, כי בדורות שלפנינו לא הצטרכו לעסוק בחינוך הבנות, לפי שכל אחד מישראל הי' מלא תורה ויראת שמים, וגם האויר בכל עיר ועיר מישראל הי' מלא וממולא בריח וברוח היהדות, והבנות שגדלו בבית ישראל שאפו את רוח היהדות בקרבן באפס מעשה וכמעט שינקו את היהדות משדי אמותיהן. אבל עכשיו נשתנו הדורות שינוי עצום. לאשרנו עמדו גדולי ישראל בדור הקודם על הקלקלה הזאת ותקנו מוסדות של תורה וחיזוק דתי בעד בנות ישראל. ושורת ההגיון הישר וחובת העיקרון הפדגוגי מחייב, כמעט, לחוג גם לבת את הגעתה לחיוב המצות, והפלי' זו שעושים בין הבנים והבנות בנוגע לחגיגת הבגרות פוגעת קשה ברגש האנושי של הבת הבוגרת, אשר בשטחים אחרים כבר זכתה בזכיון האמנציפציה, כביכול. ... ולמעשה הדבר תלוי בכוונת הרוצים לחדש מנהג זה של חגיגת הבת מצוה, אם הם מתכוונים לשם מצוה או חלילה לשם חיקוי המינים. אמנם לא נעלם ממני, שיש בין היראים אוסרים ומחמירים, שאינם שמים לב בשאלות של מנהגים דתיים לשיקולים הגיוניים, ואף אינם נותנים דעתם לבידורים הלכותיים, אלא דנים עליהן עפ"י רגשות הלב בלבד. והלב היהודי הדבק במסורת הורים ומורים, נרתע מכל שינוי שהוא בנוהג הדתי ... אולם אין להם לשכוח כי גם המצדדים בהיתר של מנהג חדש זה של חגיגת בת מצוה, לבם דופק בחרדה לחיזוק החינוך הדתי של בנות ישראל, שבנסיבות של החיים בדור הזה הן זקוקות ביותר לחיסון רוחני ולעידוד מוסרי בהגיען לגיל המצות.

שו"ת שרידי אש חלק ב סימן לט (בדפוס ישן - ג'צג)

There are those who argue against permitting bat mitzva celebrations because they deviate from the practice of previous generations who never did such things. But, in truth, this is not an argument, for in previous generations there was not a need to be involved with the education of girls because every Jew was full of Torah and the fear of Heaven and the atmosphere of every Jewish town was filled with the fragrance and spirit of Judaism. Girls who grew up in a Jewish home absorbed into themselves this spirit of Judaism without any active steps, almost as if they took it in with their mother's milk.

But now things have changed greatly. [not in Hebrew source] The influence of the street has uprooted any attachment to Judaism from the hearts of young people. Girls are educated in non-Jewish or non-religious schools which make no effort to implant within the hearts of their students a love of Torah and the holy practices of authentic Judaism. Now we must therefore focus our energies on girls' education. It pains the heart that in secular education, the study of languages, literature and the natural and social sciences are as conscientiously taught to girls as to boys. But in religious education - the study of Tanach, the ethical teachings of Chazal and in practical training in those mitzvot which women are obligated to carry out, we abandon them entirely.] Fortunately, the leaders of the Jewish people rose to deal with his major problem in the last generation and set up religious education institutions to teach Torah and give support to Jewish girls. The establishment of the Beit Ya'akov school network is one of the greatest achievements of our generation.

Clear logic and the principles of education virtually require equal celebration for a girl when she reaches the age of responsibility for mitzvot. The difference which is made in the celebration for a boy and a girl upon attaining maturity makes a very hurtful impression on the feelings of a maturing girl, who in all other area has attained equality.....

In practice, the matter depends on the motivation and intentions of those people who wish to innovate new customs such as the bat mitzvah celebration. Are their intentions leshem shamayim or, God forbid, just to imitate the non-orthodox

Indeed, I am not unaware that amongst those who are God fearing and prohibit the celebration of Bat Mitzva are those who pay no attention to logical considerations in questions of religious custom and do not even engage in halachic analysis, but rather judge solely in accordance with the feelings of the heart. For the Jewish heart, which clings to the traditions of parents and teachers, is against any change in religious custom.

Nevertheless, these people should not forget that the hearts of those who seek to permit this new custom of celebrating Bat Mitzva beat with concern to religious education of Jewish girls, who due to the circumstances of life in this generation, are in the greatest need of spiritual and ethical support and encouragement when they arrive at the age of bat mitzvah. R. Yechiel Yaakov Weinberg, Shu't Sefidei Eish 2:39

23. ומודים שאם חל להיות בשבת שיום טבוח אחר השבת ואין כהן גדול מתלבש בכליו ומותרין בהספד ובתענית שלא לקיים דברי האומרים עצרת אחר השבת.

משנה חגיגה פרק ב משנה ד

But they concede that if [Shavuot] occurs on Shabbat, the day of slaughter is after Shabbat, but the High Priest would not dress in his [festive] garments. And all were permitted to eulogize and fast [on this day. This was done] in order not to uphold and reinforce the opinion [of the Sadducees], who would say: Shavuot must always be on Sunday. **Mishna Chagiga 2:4**

24. אין שוחטין לגומא כל עיקר, אבל עושה גומא בתוך ביתו בשביל שיכנס הדם לתוכה. ובשוק לא יעשה כן, שלא יחקה את הצדוקים [המיינים]: (רש"י - יחזיק ידיכם בחוקותיכם, יחקה לשון חוק).

חולין מא.

One may not ever slaughter into a ditch, but one may make a ditch in his house so that the blood runs into it. But in public one may not even do that, so as not to strengthen the position of the Sadducees [heretics]. **Bavli Chulin 41**

25. תפילת הנשים כשהן עטופות בטלית ומלווה בקריאת התורה מחזקת את הריפורמה, וכל חיקוי של האפיקורסים אסור הוא מהתורה (עי' אבני-נזר ח"מ סי' קמט). אכן אילו באמת היתה אשה חושקת בקיום מצוה שאין היא מצווה בה, היתה עושה זאת בחדרה, ואז אין בדבר משום חיקויים של האפיקורסים. אבל כל שעושות בפרהסיה וברבים, ברור שהדבר נובע מרצון החיקוי, ועל כן הוא אסור.

רב זלמן נחמיה גולדברג, תחומין כרך יח, תפילת נשים בפרהסיה

Women's prayer groups, where the women are wearing talitot, together with Torah reading, strengthens the Reform movement, and any support for the practice of heretics is prohibited in the Torah. However if women indeed deeply desire to perform mitzvot that they are not commanded in, they should do so privately, and then there will not be a strengthening of Reform. But if someone does this openly and in public, it is clear that their motivation comes from a desire to strengthen [non-Orthodox practices], and is therefore prohibited. **R. Zalman Nechemia Goldberg, Tehumin 18**