

On Autonomy and Authority in Halakhah

The Torah demands that we obey God: Devarim 6:18: "do that which is good and right in the eyes of God . . ."

What about the high court? Devarim 17:10-11. ". . . do not depart from what they tell you right or left." We should obey them. "Do not depart from what they tell you right or left" could mean -- even if you think that they have mistaken left for right (Sifrei) or unless they have mistaken left for right (Yerushalmi Horayot 1:1). Actually, it has to mean both. There would exist no authority if everyone should simply decide independently whether to accept the court's decisions or reject them; that would amount to chaos. However, the Torah cannot, and does not, ask us to obey mistaken orders as long as they come from authorities. Made in the image of God, we have to face the consequences of our own actions. We cannot exonerate ourselves by "just following orders."

Furthermore, the Torah has a special sacrifice, the bull offered by the high court when it has ruled in error (Lev. 4:13-21). The Mishnah and Talmud elaborate on the rules for this sacrifice, dividing the community into those ordinary folks who are exonerated for following a mistaken ruling by the court, and those advanced scholars who should not have followed the mistake of the court (Horayot). Furthermore, the Mishnah and Talmud exempt the court from this sacrifice if the error occurs in an obvious matter. No one should be misled by a sufficiently ignorant decision of the high court.

The Talmud thus does not present a direct articulation of autonomy – I believe that no one in antiquity articulates autonomy directly – but in its presentation of the sacrifice of the high court, it indirectly validates a sort of autonomy.

Now we have no high court. We speak of a Shulhan Arukh Jew, a Jew who follows halakhah faithfully, but the Shulhan Arukh and similar endeavors were controversial in their own day. R. Ysoscher Katz reminds us:

Autonomy vs. centralized authority became a source of contention during the time of the Rema. When the Rema first published his **מפה**, R. Chaim Leo, the brother of the Meharal, published a scathing critique of the entire enterprise. One of his main complaints was that the publication of a

universal Ashkenazi code is an attempt to rob local Rabbis of their autonomy and independence. Here's a link to the sefer: <http://hebrewbooks.org/21874> The hakdama is particularly harsh.

The Meharshal's **ים של שלמה** is essentially a critique of the codification enterprise as well. His approach to psak in the Sefer is basically an argument for independent and individualized pesika. His hakdama is quite harsh as well. His target is the **בית יוסף**.

Our teacher, Rabbi Eliezer Cohen, frequently mentioned this controversy. The school of R. Shelomo Luria would prefer that their students study the Talmudic sources and come to their own conclusions, even if they err, rather than getting answers from code books, such as the Shulhan Arukh, even correct answers.

What about contemporary experts in Torah? Is our highest ideal obedience to authority, or do we want the individual to have a measure of independence?

In practice, the individual has autonomy. No one stops us from observing or not observing in whatever way we like. Should we see that freedom as a regrettable concomitant of modernity, or as a desirable feature?

The haredi world generally speaks in favor of obedience to *Gedolim*, although it has not achieved unanimity about who qualifies as a *Gadol*. R. Avrohom Gordimer has recently maintained that ordinary Jews should take their orders from the great rabbis, and that, in practice, ordinary Jews have obeyed the great rabbis throughout Jewish history until the modern period (source sought).

Other teachers encourage their students to learn the sources and reach independent conclusions. Several of my teachers certainly fall into that camp. Rabbi Soloveitchik clearly intended to empower his student, with his answer to my questions in halakhah: "And what would you say if I were not here to answer you?"

Many years ago, Rabbi Soloveitchik addressed an organization of observant Jewish social workers. In that electrifying talk, he distinguished between those areas of halakhah which lend themselves to mathematical answers (for example, when, exactly, does Shabbat start, or end?) and those which depend on relating different

values (where should I give my Tzedakah money?). When asked, a rabbi can give a definitive answer to the mathematical questions. Asked about the other questions, the rabbi cannot tell someone else what to do. The rabbi can help the questioner explore the values at stake in each possible answer: giving to the poor fulfills commandments related to compassion, helping persons in need, and giving to institutions which insure the continuity of Judaism fulfill other commandments. The allocation of Tzedakah depends on how the donor prioritizes these different values.

When an opinion in Torah offends against a person's moral sense, should the person bow to authority (as Rabbi Solovietchik said "surrender must be to something") or has the person other alternatives ("do what is good and right")?

Rabbi Chaim Saiman's perceptive article "The Market for *Gedolim*" contrasts different parts of the Jewish community on these issues. In Rabbi Saiman's analysis, haredi Jews often fault other observant Jews for not producing *Gedolim*. Centrist Orthodox Jews may have a feeling of inferiority in the face of that criticism.

Rabbi Saiman argues that this analysis focuses on the supply of *Gedolim*, but neglects the demand for *Gedolim*. Haredi Jews declare that the faithfulness to halakhah means obeying *Gedolim*. It follows that haredi Judaism can exist only in the presence of *Gedolim*. When a *Gadol* dies, the haredi community needs to elevate another to that status. "Thus in the haredi communities where the demand for *Gedolim* is high, the threshold for making a *Gadol* is comparatively low."

Centrist Orthodoxy takes a somewhat similar attitude towards its *Gedolim*, with the difference that Rabbi Soloveitchik and Rabbi Lichtenstein stretched the idea of what a *Gadol* could be, recognizing "the intellectual autonomy of its constituents far more than in haredi circles." Centrist Orthodoxy, according to Rabbi Saiman, has less need of a *Gadol*, and so it has higher standards for what a *Gadol* must be. It therefore feels less pressure to recognize a successor, and will spend more time "interpreting" the *Gadol* of the last generation.

Liberal Orthodox Jews, according to Rabbi Saiman, do not create a community that depends on having a *Gadol*. Rabbi Daniel Sperber certainly has the qualifications

for the role, but the community does not define itself by the Rabbi's authority. The community does not demand an authoritarian *Gadol*. Rabbi Saiman observes:

The liberal Orthodox critique of the centrist model is that in an era of mass education and radically democratic and non-hierarchical attitudes, rabbinic authority must be founded on well-defined, rational qualities, rather than the metaphysical and oracular qualities typical of the *Gadol* discourse or what some call Gadolatry.

Rabbi Saiman worries that Liberal Orthodoxy, operating with a different model from other versions of Orthodoxy, may not have the ability to generate a community with a sense of commandedness. It may thus never get recognition from other branches of Orthodox Judaism.

Wendy Amsalem (a Drisha Circle Scholar, and Ph.D. candidate in Talmud at NYU) concludes her response to Rabbi Saiman's essay with a parallel to the constitutional questions raised by the war of independence of the United States:

There was a fear that without a king, there would be no respect for law, no physical reminder that one had to submit to authority. As the Royalist Daniel Leonard wrote in 1775, without a monarch, democracy will "degenerate into tumult, violence and anarchy." Today these anxieties read as antiquated. We are rightfully suspicious of politicians who arrogate too much power, who claim that only the force of their own authority can bring about order. If this conception of power structures is unacceptable in the realm of government, why would we wish for it in our religious communities?

I affirm Prof. Saiman's posit that the Liberal Orthodox community likely could not function under the model of Gadolhood. It is not clear why they would want to.

Indeed, the ancient world generally took the hierarchical structure of society as a given. When my wife served as docent, showing the calligraphy and illuminations to visitors to an exhibit of the Prado Haggadah, Jewish visitors knew what a Haggadah and a Seder meant, but needed careful introduction to the hierarchical world view. Visitors from the Society for Creative Anachronism (a group that studies and replicates medieval arts and sciences) needed guidance about a

Haggadah and a Seder, but immediately understood the hierarchical world view presented in the illuminations.

Some theorists of the Reform movement have tried to elevate "autonomy" as the highest standard of moral judgment. I think autonomy cannot stay up there, because autonomy amounts to a purely procedural standard. It does not answer what one should do with one's autonomy.

Rabbi Saiman notes a statement from a Liberal Orthodox group, the International Rabbinical Fellowship:

The alternative and preferred model of rabbinic authority is one in which that authority is not consolidated into the hands of a few, but proliferated into as wide a circle of responsible rabbis as possible. In this model, the role of the rosh yeshiva is not to control his students, but to empower them to think for themselves, to assume responsibility, and to act on their own.

This model envisions granting more authority to local rabbis, who know the facts on the ground, than to more central figures, the great ones, the *Gedolim*. It does not, at least in this formulation, recognize the role of non-rabbis, observant Jews, in the process of decision-making. In practice, observant Jews continually make halakhic decisions, including deciding when to consult more learned fellow Jews.

R. Moshe Sokol explores the philosophical difficulties in defining autonomy, and it reconciling various forms of autonomy with any theologically-based system of law. I have not, in this discussion, turned my attention to even more fundamental challenges to the notion of autonomy: interrogating the claim that a person has (or is) an independent "self," and the effort to explain the origin of this self.

To pull these meandering thoughts together:

Observance of halakhah always, even in the pre-modern period, even in antiquity, involved decisions made by individuals. A hierarchical model of society tends to obscure the role of individuals, but individuals do make the decisions. Jewish history records sectarian splits in many pre-modern communities, and differing levels of observance in many communities.

In the modern world, we have more awareness of the role of the individual. Even in the haredi world, a Hasid of Bubov can switch to become a Hasid of Bratslav. The individual has to decide when to ask a *sh'aylah* (an inquiry to halakhic behavior), and of whom to ask.

In the liberal Orthodox world, individuals feel more inclined to ask for guidance, rather than for decisions, from their rabbinic leaders. Rabbinic leaders in the liberal Orthodox world feel more inclined to offer guidance than to tell members of their communities what to do. Liberal Orthodox Jews cannot escape being aware of the role of autonomy in their moral lives. Time will tell how well communities thrive with that self-awareness.

Works Cited

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