

The Challenge of Halakhic Innovation

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Abstract: This article defines a vision of *halakhab* and the rabbinate that identifies with modern life and works to advance religious life within Israel and Western societies. It argues for a *halakhab* and a rabbinate that is sensitive to *Kelal Yisrael*, Zionism and Israeli democracy, the interests of women, the handicapped and that can speak to all Jews. It wishes to return Torah its original domain—every aspect of human life. The author rejects the superiority of halakhic stringency and advocates the use of *hiddush* to confront the realities of modern life, seeing the former as traditional halakhic methodology.



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“Torah Blends Well With the Land”: Modernity as a Value in the World of Torah

This article¹ is written following an extended series of attacks against the segment of the religious community and its rabbinic leadership that identifies with modernity and works to advance halakhic life within the Israeli and Western context. We are aware of numerous halakhic issues in need of attention and clarification. They pertain to all areas of life, private and public alike, and relate to matters such as marital and family law, conversion and rights under the Law of Return, the withholding of divorce by recalcitrant husbands and the policies of Israeli courts in that regard, *kashrut* seen from the perspective of the broader community, principles of social justice and their realization in Jewish society and questions of morality. Yet despite the pressing nature of these issues, every request for halakhic innovation has been met with a solid wall of resistance by the official Israeli Rabbinat, which believes that acquiescence in any proposed changes would open the door to Reform. The constant concern about any openness to change is smothering the *halakhab* and choking off any development; and the policy of “the new is forbidden by the Torah”** is gaining control over the entire expanse of our religious life.

We have long since gotten used to regular invalidation by the *Haredi* public, which regards Religious Zionism as a spiritual enemy. In recent years, however, a spiritual struggle has

broken out among various streams of Religious Zionism, and most recently the modern stream has been classified as “neo-reformers.” Not content with that terminology, the (right wing) advocates have sought to follow in the path of the *Hatam Sofer* and Rabbi Samson Raphael Hirsch. They rend not only their garments but also the national-religious camp, dividing those considered faithful to the Torah from those regarded as “neo-reformers.” The call to do so aroused a substantial public outcry, but it did not produce any probing analysis of the true divide between those who issued the call and the modern public that seeks and demands renewal of the Torah. It is not enough to convene a conference of reconciliation and declare our common commitment to the *Shulhan arukh*. Such steps can promote popular social policies that preserve collegiality and maintain an educational system in which children from both the *Haredi*-nationalist (“*Hardal*,” an abbreviation for *haredi-le’umi*) and modern streams learn together, but more than that is needed. What we truly must do is to formulate for our students and children a position that advances our views as sound ideals (*le-khatehilah*) rather than merely as some after-the-fact compromise and that does not obscure our own worldview.

In the world of Torah, Rabbi Aaron Lichtenstein is considered the clearest spokesman for the group seeking to advance

* This article originally appeared in Hebrew in *Akdamot* 23, *Ehul* 5769 (2009). The controversy and importance of the issues which it discusses have only increased in Israel and the United States since its original publication. Translation from the Hebrew by Joel Linsider.—ed.

1. I would like to thank my wife Noa and my son Yedidiah who read and commented on an earlier version of the article.

** This slogan is a play on words, coined by the Hatam Sofer in his counter-revolution against early reform. He transformed the halakhic 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.”—*translator’s note*.

the policies of the modern religious community (sometimes referred to as “centrist Orthodoxy”):

Centrist Orthodoxy finds itself increasingly under attack. While the possibility of attack from both right and left is endemic to centrism by virtue of its dual exposure, the nature and extent of criticism varies. At present, I believe, particularly insofar as the Right is concerned, it is perceived by attackers and defenders alike as being particularly intensive, broad in scope, covering a wide range of thought and activity, and penetrating in depth. It consists ... of a radical critique, questioning the fundamental legitimacy and validity of the basic Centrist position.²

We must formulate for our students and children a position that advances our views as sound ideals.

The school led by R. Lichtenstein was imported in part from the United States, where it had been led by his father-in-law, Rav Joseph B. Soloveitchik, of blessed memory. It is a Judaism that will not forgo the slightest detail of the *halakhab* but is unwilling to confine God’s world to the proverbial four ells of the *halakhab*. The bounty granted by God to the world through human wisdom is meant to enrich Torah and elevate the religious personality to greater spiritual heights. Humanism improved mankind and revealed the light hidden in all God’s creatures. Together with Rabbi Lichtenstein, Rabbi Yehuda Amital, ז”ל, led his students to a moral life far removed from “irksome religiosity,” a

life of integrity and energetic action within the religious world.³ Their yeshiva, Yeshivat Har Etzion, and those aligned with it have begun a powerful process within the national-religious community—a revolutionary way of studying Bible, a teacher training college affiliated with the yeshiva, and hundreds of alumni engaged in productive work of all sorts throughout Israel.⁴

Like every movement, the one we are discussing has strains that are more conservative and others that are more innovative. To the yeshiva’s left, there arose a more radical movement of religious revival, centered on Rabbi David Hartman’s study hall, which sought more forcefully to take on rabbinic authority and halakhic decision making. Its integration of the academy—that is, the university—into the world of Torah generated much opposition, including the issuance of bans and excommunications. As a member of Bet Morasha of Jerusalem, an institution marking almost twenty years since its founding, I can say that that battle is now almost over. Rabbis with academic training are no longer an oddity and many, unafraid of what the academy has accomplished, have sought to acquire the research tools that will deepen their study of Torah. We are witnessing the slow but steady development of a stream within Judaism that is open and serious, diverse yet marching in one direction—returning the Torah from its exile and restoring it to its proper place in the broad expanse of life.

In this article, I will first sketch in general terms the image of the halakhic decisor in modern society and then briefly describe the influence of modern society on halakhic

2. *By His Light: Character and Values in the Service of God*, based on addresses by Aharon Lichtenstein, adapted by Reuven Ziegler (Alon Shevut: Yeshivat Har Etzion, 2002), p. 220.

3. Some of Rabbi Amital’s remarks are collected in *Ve-ha-arets natan li-vene’i adam* (Alon Shevut, 2005).

4. In fact, the teachings of Rabbi A. I. H. Kook had the potential to inspire a process of this sort (see, for example, Benjamin Ish-Shalom, *Ha-rav Quq—bein ratsiyolai’izm le-mistiqab* [Rabbi Kook – Between rationalism and mysticism] [Tel-Aviv, 1990], p. 292). For various historical reasons, however, it is not Rabbi Kook’s teachings that are the key factors behind this process today.

decision making. It goes without saying that these subjects cannot be fully treated in one short article, and I will be able to touch only on some highlights. With God's help, the time and place to expand the discussion will come along.

1. Transparency and Trustworthiness as Conditions for Transmitting Torah

Within the halakhic world, there is a well known tendency to react with suspicion and antagonism to previously unfamiliar innovations and lenient rulings. Something unaccepted in the past is not greeted enthusiastically in the present. For many centuries, great Torah scholars were concerned that transmitting Torah to the masses would bring about a diminution in its status and lead to an unraveling of the *halakhab* through faulty interpretations. Even in talmudic times, we find that the *amora* Rav would rule in accord with the more lenient position when studying with his students, but take the more stringent position when delivering a discourse before the masses. Those who were learned possessed the keys to halakhic ruling and to the determination of what was permitted and what was forbidden, and they ran society from that position of power.⁵

Five hundred years ago, the introduction of printing revolutionized the way halakhic decisors thought about the significance of knowledge as distinct from understanding. Today, once again, the internet revolution is fundamentally changing the rules of the game. Data bases appear before our eyes at an unimaginable pace. We are in the midst of a process that cannot be yet be fully analyzed and assessed. A person seated at home before his computer can access, by the click of a mouse, all the information he needs to resolve his questions. Anyone suffering from a medical problem is familiar with the process. "A wise man's question is half the answer"—by asking the right question, you can instantaneously obtain a range of articles and

reviews about the symptoms that are troubling you. Equipped with that information, you go to the doctor and ask his opinion. If you prepared yourself properly, he will have no more information than you do, but he will know how to analyze the sources you bring with you. He will sort through those sources for you, recommending some and rejecting others. The sage's strength lies not in his information but in his analysis.

*Judaism is marching in one direction—
returning the Torah from exile and restoring it
to its proper place in the expanse of life.*

So, too, in the world of *halakhab*. Knowledge has moved into the public domain. Everyone can know everything. Halakhic sages must recognize that change and become advisors and navigators on a sea of uncertainties. The Torah's truth is revealed in all its expansiveness. The rabbi is expected to know and present the various aspects of each issue and not to conceal those aspects that are inconsistent with his own point of view. If a rabbi is untrue to the sources and reaches his decision without taking account of conflicting views, he will be seen to be untrustworthy. And a lack of trust between a rabbi and his community of questioners will drive a wedge between that community and the Torah overall. Stating the truth, of course, does not require the decisor to remain neutral; his role requires him to reach a decision one way or the other. But the decision must be reached through disclosure, not concealment, of the alternatives.

Let me offer one example to explain the phenomenon. A major transformation in Bnei Akiva involved the separation of boys and girls. The change was instituted by Rabbi Samuel Katz, who issued, in 1978, a pamphlet entitled "*Qedoshim tihyu*" (You shall be holy). The pamphlet includes a responsum by Rabbi

5. On this, see my article "*Aseh oznekha ke-afarkeset: ahayut, tsenzurah ve-limmud ba-torah be-idan ma'agrei ha-meida* [Responsibility, censorship and Torah study in the age of data bases], *Akdamot* 14 (2004), pp. 155-174.

Shlomo Aviner regarding membership in a mixed youth group. In his full responsum, Rabbi Aviner cites sources in support of his firm conclusion that co-ed activities are absolutely forbidden. Amnon Shapira, of Tirat Zvi, undertook a critical reading of Rabbi Aviner's responsum and demonstrated that the sources were used very imprecisely, to put it mildly. Rabbi Aviner's stringent interpretation of the sources can lead to serious harm. He writes, for example, "at work, too, there should be no mixing." The source he cites for that prohibition is a responsum by Radbaz, but an examination of that responsum itself shows that Radbaz was speaking of Jewish women going to work as "outside workers" in gentile homes for days at a time. On that basis, Rabbi Aviner drew his conclusion about working in the State of Israel.⁶ When a student discovers this sort of move, his faith in the rabbi's decision making is undermined not only with respect to the ruling at hand but with respect to all others as well. Thirty years ago, Amnon Shapira had an advantage over others, for he knew the sources and could check them one by one. Now, when everyone has access to the Responsa Project data base and Google provides answers to all imaginable questions, everyone can check every responsum and examine its trustworthiness. A rabbi who rules in an oversimplified way, whether strictly or leniently, in a area of halakhic complexity will be caught as untrustworthy.

More than a century ago, in 1909, Rabbi Kook of blessed memory noted the duty of halakhic decisors to be trustworthy. He was writing in the context of a dispute with the rabbinic court of the Jerusalem Hasidim. Rabbi Kook had certified as kosher for Passover a factory that produced sesame oil,⁷ and the Jerusalem rabbis argued that his permissive ruling damaged the

wall of *halakhab*. If the smallest opening were allowed for the view of those who ruled leniently, they feared, the entire wall would be breached. Rabbi Kook's response deals with the substantive issue of how halakhic rulings are received by the community. Against the

A rabbi who rules leniently or stringently without taking account of conflicting views will be seen as untrustworthy.

Haredi claim that this leniency would undermine the entire wall, Rabbi Kook wrote as follows:

I have already written to their Torah honors [an honorific term used for one's interlocutors] that I well know the character of our contemporaries. It is precisely by seeing that we are willing to permit whatever an in-depth reading of the law makes permissible that they will understand that we are permitting it because of the truth of Torah, and many who adhere to Torah will come, with God's help, to heed the words of halakhic teachers. But if it is found that there are things that the law itself would permit but that the rabbis leave as prohibited, showing no concern about the resulting burdens and difficulties imposed on Jews, the result will be, God forbid, a great desecration of God's name, as many of those who violate *halakhab* will come to say of important principles of Torah that if the rabbis wanted to permit them, they could do so; and the law will be perverted as a result.⁸

Rabbi Kook's words should penetrate deep into the consciousness of our halakhic

6. Rabbi Aviner's responsum and Amnon Shapira's comments were published by Bnei Akiva in a pamphlet entitled *Hevrah me'urevet bi-vene'iqiva be-yameinu* [Mixed groups in Bnei Akiva today] (Tevet 5741 [Winter 1980-1981]).

7. For a careful analysis of the dispute, see Haggai Ben-Artzi, "*Idiologiyah u-pesiqat halakhab* [Ideology and halakhic ruling], in Amihai Berholtz, ed., *Masa el ha-halakhab* [Journey to the *halakhab*] (Tel-Aviv, 2003), pp. 177-195.

8. *Responsa Orav mishpat*, 112.

decisors. His novel point here is that the “slippery slope” is a risk associated not only with lenient rulings but also with unnecessarily harsh rulings that close the doors of possibility. The rabbis of Jerusalem feared that opening a door would undermine the entire building, but Rabbi Kook, in a mirror image of their position, fears that excess stringency will impair the relationship between Israel and its Father in heaven. If Rabbi Kook could portray the community of a century ago as understanding and knowledgeable, what should we say of our generation, exposed to all its data bases?

2. On the *Poseq’s* Sensitivity: “What If It Were Your Daughter?”

The foregoing comments by Rabbi Kook contain an additional insight. He describes the feelings of a person who comes to a rabbi with a question and senses that the rabbi does not share his sorrow and his pain. When a rabbi could have ruled permissively or at least struggled with the issue but instead cuts straight to an unambiguously strict ruling, a desecration of God’s name results. A considerate and lenient ruling can bind the public to the Torah and bolster the observance of *halakhab* within Israel. Slanderers allege that many questioners are interested only in attacking and annulling the Torah, but arrayed against them are the myriads of Jews, at all times and all places, who demonstrate that loyalty to the Torah is not impaired by the need for lenient and thoughtful halakhic rulings. The examples are numerous and I need not enumerate them here.⁹

Applying excess stringency in the face of possible leniency is a relatively recent

phenomenon not previously accepted by halakhists. One even finds earlier disputes among decisors in which one side strives mightily to rule with leniency while the opposing side makes little if any effort on behalf of a strict ruling. One explanation for the new phenomenon is that offered by Rabbi David Siegel, a leading seventeenth-century decisor and author of *Turei zahav* (Taz). At issue was whether the new season’s grain (*hadash*) grown outside the Land of Israel could be consumed without regard to the timing conditions applicable to *hadash* in the Land of Israel. The leading decisors of the Mediterranean region had ruled strictly, forbidding *hadash* outside the Land of Israel as a matter of biblical law (*mi-de-orayeta*); the Ashkenazi decisors in northern Europe, in contrast, sought a way to rule leniently.

Applying excess stringency in the face of possible leniency is a recent phenomenon.

Historical and geographical analysis of the issue shows that only in Ashkenaz and in Yemen did avoiding *hadash* pose existential problems; in Spain and other Mediterranean lands, conditions made it easy to refrain from eating *hadash*. The Taz offers the following explanation for the strict Sefardi rulings: “Those decisors were not concerned about hardship in this regard, for in their lands, where the climate is warm, there was no hardship at all [in avoiding *hadash*].”¹⁰

In other words, the burden and hardship associated with avoiding *hadash* did not affect the communities in which the Sefardi rabbis

9. Rabbi Prof. Daniel Sperber has treated the issue in his book, *Darkeh shel ha-halakhab* [The way of *halakhab*] (Jerusalem, 2007). Sperber there presents dozens of examples of a halakhic approach that is congenial to the questioner and attentive to his distress.

10. *Yoreh de`ah* 293:4. I treated this question comprehensively in a study of *hadash* outside the Land of Israel. A summary of that study appears in “*Masa be-aron ha-sefarim ha-hilkhati—gulgulei mitsvat hadash be-toledot ha-halakhab*” [Journey through the halakhic library—the evolution of the commandment regarding *hadash* in the history of *halakhab*], in *Masa el ha-halakhab* (above, n. 7), pp. 127-156.

worked; accordingly, they were under no pressure to explore the issue thoroughly so as to find possible ways of ruling leniently. But all the decisors in those lands where leniency was needed enlisted in the effort to help the public and made every effort to relax the prohibition.

Were they your daughters, would you demean them in this way?

When an individual or a group sees that a decisor makes no effort to help deal with sorrows and hardships, that individual or group will lose faith in the entire halakhic apparatus. Every day we encounter intelligent and educated people who have run into a wall of resistance erected by rabbis who, in their concern about slippery slopes, forbid what is permitted and pay no attention to the cries of Jews and the difficulties they face. The *gemara* (BT *Ketubbot* 23a) tells of young Jewish women who had been taken captive and came to Nehardea with their captors. The *amora* Samuel struggled with the question of their marriageability, concerned that they might have been defiled by their captors before coming before him. Samuel's father rebuked him for his concern: "Were they your daughters, would you demean them in this way?" Those words should resonate inside the head of every decisor as he considers every question that comes before him: "If she were your daughter ..." Everyone knows that a parent will make every effort to help his child, overturning the world if need be.

If decisors appear to disregard people's needs because they are preoccupied with their own "concerns," they contribute thereby to a growing sense of alienation and an ensuing movement away from the world of Torah. The truth of the Torah requires us to permit what can possibly be permitted and not to worry about how extremists, who want to

impose all manner of stringencies, will react. Rabbi Kook warns that leaving unneeded prohibitions in place or failing to permit what can be permitted causes a breach between the public and its rabbis—a breach that cannot be healed by speeches or bans. The public will understand that someone who ought to be concerned about its welfare is disregarding it and paying no heed to its pain.

One of my earliest experiences as rabbi of Kibbutz Sa'ad involved the *mehitsab* in the synagogue. My neighbor Gili Zevin wrote an article about the distress felt by a woman praying behind the *mehitsab*; the article was published in *Amudim*, the journal of the religious kibbutz movement. A month later, a response by the rabbi of one of the kibbutzim was published. Bearing the title "*Haketzza'aqatab*" ("Is it as she cries"; the word alludes mockingly to the cry from Sodom that God determines to investigate [Gen. 18:21]), the response patronizingly and disparagingly rejected what Gili had written. I will never forget the harm caused by his words. Not every outcry warrants agreement, but there usually is a duty to consider the pain that causes it.

The *gemara* (BT *Shabbat* 55a) tells of a woman who came to Samuel in distress. He disregarded her, and his student, Rabbi Judah, questioned his doing so. Samuel replied that the responsibility was not his but that of the Exilarch. That would appear to end the story, but another passage (BT *Bava Batra* 10b) cites a tradition about the son of Rabbi Joshua ben Levi (the first generation of *amora'im*), who fell ill, died, and returned to life. His father asked him what he had seen while dead, and the son replied "I saw a world turned upside down, the exalted below and the lowly elevated." Tosafot ad loc. says that the *ge'onim* had an oral tradition, passed from rabbi to rabbi, "that in the upside-down world he had seen Samuel seated [as a student] before Rabbi Judah his

student, who had protested Samuel's conduct." One need not agree with a plea, but one may not close his ears to it.

3. Society Advancing Halakhic Thought: the Attitude toward the Disabled

Let me now turn to the second part of the article, an effort to clarify the influence of modernity on the *halakhab*. An optimistic attitude about the development of the world and of man leads the modern decisor to be attentive to and participate in the process of improvement being undergone by society overall. Not every step taken is praiseworthy, of course, and there are times when society's movement seems more a retreat than an advance. But there also are instances in which the present is a clear improvement over the past, and the decisor in those instances must react positively to the change and interpret the *halakhab* in accord with the new circumstances.

The status of women is a leading case for attentiveness to changing reality.

One of the most prominent new features of today's society is the discovery of "the other." Modern societies strive to include, as comprehensively as possible, those who in the past had been excluded from the social center: the once marginalized woman has become an equal partner in all aspects of society, the person with physical or psychological disabilities has gained equal rights and worth; people with special needs or unique circumstances are sounding their voices and expect to be heard and understood. In all these areas, contemporary adherents of the Torah expect a response from their spiritual leadership. If society in general is undergoing a revolution with respect to the disabled, we must find the light shed by Torah on those very same issues. The Torah does not always

clear the way for society. Sometimes, it is social processes that energize adherents of the Torah to find new aspects of Torah—in accord with *halakhab*.

Let me illustrate briefly. Some three hundred fifty years ago, Rabbi Jacob Hagiz considered the halakhic status of the deaf mute, particularly the question of whether the Sabbath might be desecrated to save his life. In his responsum, one can discern the distress of a great man who senses that the mute is possessed of the divine image yet is of uncertain halakhic status; numerous sources treat him as "not a life." His distress led him to pray that the mute not suffer a dangerous illness on the Sabbath, for people might be unwilling to desecrate the Sabbath in order to treat him. Some two hundred years later, Rabbi Israel Meir Kagan of Radin (known as the Hafets Hayyim) read that responsum with surprise: "I don't know what it was that caused the author of Halakhot qetanot [that is, Rabbi Hagiz] to have doubts about whether to desecrate [the Sabbath, if needed to treat his illness] or kill [to defend him from murderous attack] on his behalf; and his words are hard to understand." But the Hafets Hayyim needn't have been surprised: during the two centuries that separated his time from that of Rabbi Hagiz, the attitude toward the disabled had undergone a revolutionary change. During the nineteenth century, the abilities of deaf mutes were discovered and schools for them began to be opened. Great Torah scholars, among them Rabbi Hayyim of Sanz, were asked about the status of the deaf in light of these changes, and their rulings effected a total change in their status. Rabbi Esriel Hildesheimer expressly addressed the issue in a responsum to the rabbis of Germany:

That was the perspective regarding deaf mutes in those times, and it is so stated in medical books of the period. Only later did they change their minds and reach the conclusion

11. For Rabbi Hagiz's responsum, see Responsa *Halakhot qetanot*, part 1. For the Hafets Hayyim's reaction, see *Bi'ur halakhab* on sec. 329.

that deaf mutes have mental capacity (though it is difficult for them to express it), and that is certainly shown by experience today. And this does not at all contradict the words of our sages of blessed memory, for they were speaking of a mute for whom use of his mental capacity was impossible.¹²

Modern thought demands in no uncertain terms that decisors recognize the transformation in the modern Western world, which acknowledges the light cast by each person simply by reason of being a person. Anyone who deals with these issues sees the change the world has undergone between the Middle Ages and now. The challenge is to reveal the Torah's power with regard to the "other," including those with disabilities. The standing of the human being, created in God's image, has been enhanced in modern times. The responsa written over the past two hundred years show a tension between the desire to preserve the *halakhab* as it existed and the desire to move it forward in view of the changes taking place in society.¹³ We find, for example, disagreement over whether a blind person's guide dog may be brought into a

synagogue,¹⁴ consideration of whether a mentally disabled boy may be called to the Torah as a bar mitzvah, and other questions of that sort.¹⁵ Their common denominator is that anyone who chooses to participate in modern life must leave no stone unturned in seeking ways to integrate the Torah into it.

4. Modernity Moving the Decisor—the Status of Women as a Leading Case for Attentiveness to a Changing Reality

To illustrate both parts of the article—characterization of the modern decisor and modernity as a driver of halakhic decision making—let me consider the most prominent subject in modern halakhic decision making: the change in family structure in the wake of the changed status of woman. When we examine the issues that occupied the attention of modern religious society during the 1960s and 1970s, we find the most prominent questions to involve the attitude toward resident aliens, the attitude toward western culture, and the place of the Sabbath in a Jewish and democratic state. One issue clearly not on the agenda of the time was that of the

12. Responsa of Rabbi Esriel Hildesheimer, part 2, sec. 58. In that responsum, he sets forth the change in the attitude toward the deaf of society overall and discusses the difference between those who are willing to recognize a changed reality and those who entrench themselves in the understanding reflected in the Talmud.

13. See, for example, Rabbi Yuval Cherlow, *Be-itsalmo—ha-adam ha-nivra be-tselem* [In His image – Man created in God's image] (Jerusalem, 2009). In his introduction, Rabbi Cherlow describes the distress he feels because so many bearers of the Torah's banner are misdirected, disregarding the numerous elements of the divine image in man.

14. The dispute between Rabbi Feinstein and Rabbi Breisch regarding the entry into the synagogue of a blind person's guide dog offers an excellent example. Rabbi Feinstein works over the sources in order to prove that it is permitted. Rabbi Breisch challenges his responsum, and in a formal sense, he is right. Rabbi Feinstein's erudite acrobatics created an unstable structure that can be easily toppled. But Rabbi Breisch's responsum gives no recognition at all to the psychological difference to a blind person between leading a guide dog and being led by another person. Rabbi Feinstein shows the motivation to work through the Torah in order to blend it with the needs of society. Rabbi Feinstein's responsum appears in *Iggerot mosheh*, part 1, sec. 45; Rabbi Breisch's responsum is in *Helqat ya'akov, Orah hayyim*, sec. 34.

15. Rabbi Shlomo Aviner, "She'eilot be-inyanei yeladim im tismonet daun" [Questions regarding Down's syndrome children], *Asiya* 57-58 (1997), pp. 14-16.

16. This finding is supported by a review of the journal *Mehalekhem* of the Movement for Torah Judaism—the founding movement of the Religious Academy in Israel—from 1966 to 1974. See, on that, my article "Iyyun be-darkab shel ha-tenu'ab le-yabadut shel ha-toral" [A study of the Movement for Torah Judaism], in *Sefer zikkaron le-profesor ze'ev falk, zil* [Memorial volume for Prof. Zev Falk] (Jerusalem, 2005), pp. 371-384. In recent years, we have seen numerous questions related to the family: deferral of pregnancy in the early years of a marriage; mature single women wanting to become pregnant by artificial insemination, homosexuals wanting to be recognized "out of the closet." The diverse reactions to this complex of issues demonstrate the gap between a modern halakhic position and conservative efforts to muzzle the forces said to be seeking to demolish the Jewish home. Here, too, the rabbi has a duty to listen carefully to every question posed to him.

status of women.¹⁶ During the past two decades, however, that topic became a central, substantive issue one requiring comprehensive rethinking in many areas: the study of Torah, the domestic power structure, women's roles in prayer and public Torah reading, and the role of women as halakhic authorities. These questions flow from an across-the-board change in women's status in society. Only ninety years ago, Rabbi Kook and Rabbi Uziel could disagree on women's suffrage; now, religious women run public and commercial enterprises just as do men, without any difference. In the world of Torah, however, the topic is a flashpoint of disagreement. Whenever a question arises related to a change in women's status, cries of "reform" ring out from halakhic conservatives. Many rabbis see external and alien tendencies, grounded in feminism, in women's demands for a changed position in religious life. But like all halakhic issues, this one, too, has undergone a process of ripening and internalization, and rabbis, like the general public, are becoming more accustomed to change.

As an example, let us consider the question of family planning. Young couples might want to delay having children for any number of reasons: allowing the wife to complete her higher education; a sense of insecurity (personal or economic) during the early stages of a marriage; various personal plans.¹⁷ As much as thirty years ago, Rabbi Aharon Lichtenstein noted the frequency with which the issue was arising: "Almost every halakhic authority, whether [community] rabbi or *Rosh Yeshivah*, who maintains broad contact with young couples about to marry or recently married can attest to the frequency of inquires in this area."¹⁸

Rabbi Lichtenstein writes of the seriousness and *gravitas* with which the question should be considered, for the questioners are moved not

by spiritual languor or flippancy but by great seriousness and a true clash between competing values. The general interest, requiring concern for the nation, comes up against an individual's interests, legitimate on both personal and Torah grounds: continued Torah study, acquiring a trade, professional advancement, psychological tranquility, the ability to provide a suitable education for the children, and so on. If couples dealing with the issue find themselves confronting a solid wall of decisors who rule that nothing can justify deferral of childbearing, the *halakhab* will become insignificant for them and they will stop posing questions to the rabbis. But if they find an attentive and deliberative rabbi, one who studies, exerts himself, and strives to help them, they will build their home responsibly and will seek rabbinic advice on how to conduct themselves in accordance with

Working through the issue with them and striving to find a response to their question draws people closer to a life of Torah

the halakhic tradition. Over the years, many couples have come to me with questions along these lines. This is not the place to go into my policies regarding this sensitive issue, but I have no doubt that the approach I've outlined—carefully listening to the couple, working through the issue with them, and striving to find a response to their question within the world of *halakhab*—draws more people closer to a life of Torah.

One of the leading rabbis within the group striving to be attentive to the public is Rabbi Yuval Cherlow, an alumnus of Yeshivat Har Etzion and the head of Yeshivat Petah Tiqvah. He fights fearlessly to provide a hearing for the voices of the distressed; often, they are the voices of women who feel that the world of

17. On this topic, see also Moshe Kahn's article, "The Halakhic Parameters of Delaying Procreation" in this edition of *Meorot*—ed..

18. Rabbi Aharon Lichtenstein, "Be-fetaḥ ha-sha'ar" [Introduction], in Rabbi Elyakim Ellinson, ed., *Tikhnun ha-mishpaha u-meni'at heirayon* [Family planning and birth control] (Tel-Aviv, 1977), p. 3.

Torah has no response to their problems. To illustrate, let me cite a short passage from his discussion of a request by unmarried women to become mothers through the use of donated sperm. This is a sensitive issue, invoking extremely delicate matters related to the structure and meaning of the family, the dismantling of the family in modern society, and the need to be attentive to an individual's pain. Most decisors to whom the question has been posed have reacted in sweepingly negative terms, concerned about the unraveling of household and family. For example, Meir Halevi writes as follows:

Among the harms wrought by liberal modernization is our becoming overly technological, rationalist, and careerist. When a woman's career plans call for bearing a child at the age of 35 to 40 as a single mother, it suggests she was unable to form a healthy, solid bond of love and mutual support with a partner. How, then, can that woman think for a moment that she will form a healthy, solid bond with a child? A child who, at least initially, will be extremely egoistic and egocentric, just like every infant? Today there are as well many religious women who very much want to bring children into the world and fulfill their destined role as a mother, yet they cannot find their match. What do they do? They go to the Puah Institute [a halakhic fertility clinic] and, turned away, look elsewhere and receive authorization to go to a gentile sperm bank in France or Germany, to avoid the risk of brother-sister *mamzerut* in Israel.*** In this way, a child is born who lacks a father image; the sages of blessed memory referred to him as a *shtetzi*, for when he is asked who his father is, he is silent [*shotef*]. In such cases,

he can always claim his father is a banker, from the sperm bank.¹⁹

All weaponry may be used, including transforming the permissible into the forbidden.

The writer does not conceal his point of departure: modernity is “a harm.” And, in a manner typical of such writers, he distorts the *halakhab*, as I noted at the beginning of this article. The sweeping determination that the child born to this woman would be a *shtetzi* is halakhically wrong, meant to amplify the sense of prohibition and raise the solid wall even higher. Five years ago, Rabbi Ovadia Yosef wrote a responsum about a single woman who bore a son with sperm from a sperm bank; she later became religiously observant and asked that her son be declared fit to marry halakhically. In his responsum, Rabbi Ovadia Yosef reasons that because she was unmarried, most men would have been halakhically permitted to marry her, and the applicable halakhic presumption with respect to uncertainty therefore calls for treating the sperm as having come from a permissible source. The offspring, accordingly, is not to be considered a “*shtetzi*,” and had the offspring been a daughter, she would have been eligible even to marry a *kehen*.²⁰ For the writer of the quoted article, however, *halakhab* does not matter. He has a goal—waging war against the dismantling of the family—and in that war, all weaponry may be used, including transformation of the permissible into the forbidden. To very similar effect is the treatment of the issue by Rabbi David Golinkin, head of the Law Committee of the Masorti Movement in Israel. Writing in 1988, long before the question emerged with its

***A *mamzer* is a child resulting from a forbidden union, as between brother and sister. Receiving sperm from an anonymous Jewish donor entails a risk that the resulting child might grow up and unknowingly marry a genetic sibling.—*translator's note*.

19. From the “opinion” section of the Arutz 7 website, 24 July 2003.

20. *Responsa Yabi'a omer*, part 10, *Even ha-ezer*, sec. 10. Needless to say, Rabbi Ovadia Yosef did not mean to authorize, as a matter of principle (*le-katehilab*), the use of sperm donation by unmarried women. His responsum dealt only after the fact (*be-dianad*) with a situation that had arisen.

current urgency, Rabbi Golinkin adopting a sweepingly negative stance, seeing no opening whatever to a permissive ruling.

In his words: “If we adopt the method of artificially inseminating single women with donated sperm, we will seal the fate of the Jewish family.”²¹

In contrast to the foregoing approach, consider Rabbi Cherlow’s words:

When a woman reaches a state in which it is nearly certain that she will be unable to establish a household in Israel even though she very much wants to and is willing to compromise to be able to do so, and, meanwhile, her biological clock is ticking and her chances of successfully bearing a child are diminishing, and she very much wants to have a child—in such a case, halakhic decisors face an extremely weighty question and they are divided on it. Some say that the woman should not treat her desire to bear a child as counterbalancing the importance of the sanctity of the Jewish family and the interest of the child in being born into a family with both father and mother; and they see no way to authorize such action [that is, artificial insemination with donated sperm]. Moreover, there is a general public interest to be taken into account, namely the desire to avoid the slippery slope toward single parenthood at ever earlier ages and a situation in which bearing a child in the absence of a husband becomes a normative or even ideal possibility. Public enactments to promote the sanctity of the family in Israel sometimes foreclose satisfying a person’s individual desire. On the other hand, some decisors take the view that, upon reaching the age where one’s chances of becoming a parent are about to run out, and when we are

speaking of someone who has been unable to marry despite doing all she could to try, it would not be right to prevent her for halakhic reasons from fulfilling her hope to have a child. That is so because the Torah itself describes a childless woman as feeling that her life is not a life (“Give me children or I die,” cries Rachel to Jacob) and the *midrash* notes that Jacob hurt Rachel with his untoward and impatient response; it is so because there is no express prohibition on a woman bearing a child without a family structure; it is so because of the fact that we must not go into the business of issuing “licenses to become pregnant,” which is the way of the world that precedes the Torah and an essential aspect of human existence; and it is so because of the fact that, at times, a mother who bears one child of her own even without a father will raise that child with greater warmth and love than would be the case in a shaky family that continues to bear children.²²

I chose this example because it reveals the halakhist’s ability to listen to people and share their pain. Here, too, I want to avoid going into the ruling itself. Everyone understands that Rabbi Cherlow is working within the halakhic field but choosing a way through it that draws people to the Torah rather than pushing them outside the gate. He sees the danger of the “slippery slope” not only in connection with the dismantling of the family but also in raising the wall of prohibition and closing one’s ears to the distress of these women.

5. The “Power of Leniency” and the Duty to all of Israel: The Controversy over “Kosharot”

Let me conclude this discussion of modern halakhic decision making with an issue that is

21. *Teshuvot va`ad ha-halakhah shel kenesset ha-rabbanim be-yisra’el* [Responsa of the Law Committee of the Rabbinical Assembly in Israel] vol. 3 (1988-1989), pp. 83-92.

22. From the website of Yeshivat Petah Tiqvah.

of interest beyond the modern community and touches on the life of anyone who feels some responsibility for all of Israel and does not live a sectarian life. Many rabbis in the *Haredi* community see themselves as “sacred guardians,” standing on watch against any infiltration of external winds into the world of Torah-observant Judaism. They share the mindset of the passengers on Noah’s Ark, striving to save themselves from the waters of corruption surging around them throughout the entire world. All their energy is concentrated on the effort to preserve and develop their minority group; the world beyond is a threat but otherwise of no concern. The ethos of religious Zionism was, for many years, just the opposite. Armed with great faith, the people of Bnei Akiva fostered the idea of being fully integrated into all aspects of public life—culture, education, security, and industry. If *Haredi* Judaism can be compared to the passengers on Noah’s Ark, Religious Zionism adopted the image of “the children of Abraham our father,” acting with a sense of “Go forth” (*lekh lekha*, God’s charge to Abraham) to spread the great light of Torah as it reveals itself in all fields of life. One area that stands out here is that of the *kashrut* of food.

The *Haredi* approach to *kashrut* attempts to meet the private needs of small groups by establishing an array of *kashrut* supervision agencies organized along sectarian lines. The Chief Rabbinate, in contrast, drew a line that could encompass the largest possible number of producers and consumers; to do so, they chose a policy of ruling leniently rather than stringently. For example, when Rabbi Amar, later the Chief Rabbi, was serving as Rabbi of Tel-Aviv, he wanted to implement the *kashrut* standards of the *Beit Yosef*, which required continuous supervision of work performed by gentiles. But it quickly became clear to him that requiring every business owner to maintain continuous supervision by a Jew would do more harm than good. Many business owners willing to be certified as kosher under a regular

supervisory system would forgo *kashrut* altogether rather than meet the *Beit Yosef* standard. In consultation with his teacher and mentor, Rabbi Ovadia Yosef, Rabbi Amar decided to leave in place the existing distinction between regular *kashrut*, which applies the Rama’s standards and requires only that the cooking fire be lit by a Jew, and “*mehadrin*” *kashrut*, which applies, among other stringencies, that of the *Beit Yosef* with respect to supervising gentile workers.²³ Nevertheless, as part of the *Haredi* tendencies now characterizing some streams within Religious Zionism, an organization called “*Kosharol*” was formed and took the unprecedented step of issuing a report questioning the entire *kashrut* system in Jerusalem, hoping thereby to bolster *kashrut* and transform it into “*mehadrin*.” I see this as an example of the revolution taking place within Religious Zionism, which began as an effort to undertake a duty to all Israel but now, in a process of supposed “spiritual strengthening” is becoming like one of the religious courts in the *Haredi* street.

If Haredi Judaism is compared to the passengers on Noah’s Ark, Religious Zionism is “the children of Abraham.”

The process can be seen as well in the context of *shemittah*, (the agricultural sabbatical year, when, to state the matter in very general terms, land owned by Jews in the Land of Israel may not be cultivated and other restrictions apply). Since the early days of Zionism, the restrictions that apply during the *shemittah* year and the demands of modern agriculture have been reconciled by a sale of land to a non-Jew (a process termed *heter mekhirah*). Recently though, voices from within Religious Zionism have called for “enhanced *shemittah* observance” and have undercut *heter mekhirah*. The result, however, is an overall debasement of the sanctity of produce that grows during the *shemittah* year, for produce is sold in the normal way with only a small packaging

notation that the product is subject to *shemittah*-sanctity (see, for example, the wines produced by Carmel Mizrahi). Thousands of innocent Jews who are unaware of the product's *shemittah*-sanctity casually violate the prohibition, a transgression that could have been avoided through the use of *heter mekhirah*.

Religious Zionism is becoming like the religious courts on the Haredi street.

Zionist halakhic decision making should be guided by recognition of a duty to the public at large and responsiveness to the needs of the majority. It should not be guided by an effort to satisfy the will of marginal groups.

6. Modern Rabbinic Leadership

Many in the Religious Zionist camp, in cities and settlements alike, identify with the principles of the modern stream of Torah-observant Jews and genuinely hope to see our spiritual renewal; they conduct their personal and family lives in accord with those ideas. But they are often perplexed when their children come home from our religious educational institutions spouting a new “Torah”—one that rejects culture, promotes alienation from the values on which their homes are grounded, and warns of the dangers inherent in the openness that characterizes those homes. A spiritual wedge is driven between the communities and a segment of the educational system. The public that identifies in its way of life with the ideas I have described does not forcefully demand spiritual leadership suited to its way of life.

Still, there is hope. A new generation of spiritual leaders is emerging. Some of them are open to modern culture, drawing on it and internalizing its positive aspects within their spiritual world. Aggressive opposition to anything that smacks of the academy has become a minority position within the Zionist spiritual leadership. More and more yeshivas

are introducing their teachers to the fruits of academic research, and the cross-cultural encounter is producing an enriched world of Torah. That leadership is slowly making its way into the public marketplace, and the world is coming to know a different kind of rabbinate: one that is connected to and integrated with the experience of life and culture in their entirety. These encounters, may they increase, will bolster the standing of the rabbis in the eyes of their communities and the standing of Torah in practical, day-to-day life.

7. Concluding Note: Invalidating the Culture of Invalidation

Some time ago I officiated at a wedding at an auditorium in the central part of Israel. It was a regular Israeli wedding, that of a secular couple who wanted to be tied to their ancestral tradition and chose to be married according to the Law of Moses and Israel. They made no special requests and sought no innovations; they did not suggest that the bride give the groom a ring or that women recite the seven blessings. The ceremony was simple and fully traditional. On my way to my car after the ceremony I was stopped by a man who approached me cautiously:

“Rabbi, may I ask you a question? Was that a Reform ceremony?”

“Why do you ask? It was an entirely ordinary ceremony,” I replied.

“But I understood everything that was said there; you spoke Israeli,” he answered.

Much can be learned from this dialogue, but what I want to do here is call attention to the tragedy that has befallen religious Judaism. To be “Orthodox” in the eyes of that secular Israeli Jew, one must be incomprehensible, irrelevant, uncongenial. An “Orthodox” Jew is expected to maintain, in thought, dress, language, and conduct, the “original” Judaism—not a Judaism that speaks Israeli

Hebrew and is up-to-date in its involvement with practical life but a Judaism that preserves European synagogue life, the melodies of grandpa's house, the appearance of the *shtetl*. That is Judaism.

Religious Zionism has long been a presence in all aspects of Israeli life, but it is not perceived as “the real thing.” All of us know the humorous line we have heard countless times—“the religious are thus and such ... but you're different.” *Haredi* Judaism, for its part, does all it can to reinforce that image. The stigma and the reality are nicely connected.

Halakhic decision-making should be guided by a duty to the public at large and responsiveness to the needs of the majority.

Haredi Judaism was openly hostile to Religious Zionism, seeing it as a threat to the existence of Torah. Every innovation was cast as “reform.” The existence of various streams within the nationalist-religious movement was of no interest to the *Haredi* leadership; the nationalist identity itself invalidates their standing. An example of the *Haredi* failure to distinguish between streams within Religious Zionism is provided by the attitude of *Haredi* rabbis to the campaign to go up to the Temple Mount—a campaign led by the rabbis of Yesha (an acronym for Yehudah-Shomron-Azza, that is, the West Bank and Gaza). Within the nationalist-religious camp, these rabbis are classed as a group especially punctilious in its religious observance.

Nevertheless, Rabbi Ovadia Yosef reacted in the following terms to publication of their ascent to the Temple Mount:

... These rabbis of Yesha who publicized this effort, do they want to be reformers? Let them say that is what they want. It is a stumbling block for the masses. We commit enough sins; do we need to add to Israel's sins? There was some wise man some seventy years ago (evidently reincarnated in the Yesha rabbis) who wanted to permit entry into the Temple Mount. The *ga'on* Rabbi Yosef Yedid wanted to ban him for that until the matter was suppressed, and the Land quieted down²⁴

This, of course, is but one instance of an overall program of invalidation. One could cite others—the invalidation of Rabbi Druckman in the *Haredi* press by its refusal to refer to him as “Rabbi,” the struggle against the appointment of Rabbi Ariel to the Chief Rabbinate, and many more. Were the trend confined to relations between the *Haredi* movement and the Religious-Zionist movement, there would be less need to speak out. But I am writing here of internal invalidation within the Religious-Zionist camp. That sort of invalidation has never drawn anyone closer to the world of Torah, has never curtailed assimilation, has never prevented groundless hatred; it is simply the introduction of “alien fire.” We may demand forcefully that this corrosive trend be halted and that we develop among us a culture in which parties to disputes permit each other to sanctify their Creator, in a spirit of calm.

24. Discourse for *Shabbat Mattot-Mas`ei*, 1997, p. 21.