

*Jewish Commitment in a Modern World:
Rabbi Hayyim Hirschenson and
His Attitude to Modernity* (Hebrew)
by David Zohar

Reviewed by Marc Shapiro

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Jewish Commitment in a Modern World: Rabbi Hayyim Hirschenson and His Attitude to Modernity (Hebrew) by David Zohar (Jerusalem, 2003)

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In 1910 one of the first "New World" rabbinic periodicals began to appear on American soil. It was called *Ha-Mitzpeh* and was published by Rabbis Abraham Aaron Yudelevitz and Jacob Eskolsky. Its very first issue begins with an open letter, whose author is identified as an honored member of Agudat ha-Rabbanim of the United States and Canada. In this letter, the author notes the imperative of trying to find *heterim* for things which are a necessity of life in the U.S. By doing so, Jews will be able to remain loyal to tradition, and this will also strengthen the hand of the Orthodox rabbinate, as the people will feel that the rabbis are interested in their plight. Among the issues the anonymous author raises for discussion, urging his colleagues to establish the halakhic status of, and where relevant and possible, to find *heterim* for, are warming fully cooked foods on Shabbat; shaving with a razor, which he says is virtually a necessity for young Americans; Sabbath violators and other sinners, civil marriages; and a host of other matters, twenty-eight in all.

The most interesting, and radical, of his proposals is actually the first, which reads as follows: "Are we at present able to find a *heter* for some rabbinic prohibitions, based on the principle that a decree that has not spread among most of the community can be voided by a lesser *Beit Din* [than the one that instituted it]?" The basis for this suggestion is Maimonides' ruling (*Mishneh Torah, Hilkhhot Mamrim* 2:6-7):

If the court has issued a decree in the belief that the majority of the community could endure it, and after the enactment thereof the people made light of it and it

was not accepted by the majority, the decree is void and the court is denied the right to coerce the people to abide by it. If after a decree had been promulgated, the court was of the opinion that it was universally accepted by Israel and nothing was done about it for years, and after the lapse of a long period a later court investigates the doings of Israel and finds that the decree is not generally accepted, the latter court, even if it be inferior to the former in wisdom and number, is authorized to abrogate it.

Traditionally, this *halakhab* has been understood to mean that if, *at the time of the decree*, the people never accepted it, then it can be revoked. What the anonymous author suggested was that since it is the Jewish people who, at the end of the day, decide if a decree is to be binding, then perhaps this authority does not only apply to the first generation, but for all time. In other words, the Jewish people have a continuing role in ensuring the validity of rabbinic legislation. Therefore, if the Jewish population—and he has in mind those who are generally observant—chooses to ignore a rabbinic decree that in years past was accepted, then this very lack of observance, which at first was understandably regarded as sinful, could itself give authority to the rabbis to formally void the decree.

This is, to be sure, an extreme position, in that it places the continuing, binding nature of rabbinic authority in the hands of the people. Yet it is not as radical, or unique, as many will think. To begin with, no less a figure than R. Joseph Karo claims

that this approach is a plausible explanation of Maimonides' statement.¹ Furthermore, it is basic to halakhic history that the response of the community plays a role in the authority of *halakhab*. That is, when enough people flout a *halakhab*, and the sages are unable to improve matters, it is usually not long before rabbis begin to develop justifications for the people's behavior (*limmud zekhut*).² In fact, R. Abraham Isaac Kook even provided the theological justification for this phenomenon of halakhic "updating". In a famous passage from *Arpelei Tobar*, which because of its daring was censored by a "theologically correct" editor, R. Kook writes:

At times, when there is need to transgress the way of the Torah, and there is no one in the generation who can show the way, the thing comes about through breaching. Nevertheless, it is better for the world that such a matter come about unintentionally. Only when prophecy rests on Israel is it possible to innovate such a matter as a "temporary measure". Then it is done with express permission. With the damming of the light of prophecy, the innovation comes about through a long-lasting breach, which saddens the heart with its externals, but gladdens it with its inner content.³

In other words, when continued adherence to a certain *halakhab* will have negative consequences, and there is no formal mechanism for abolishing the law, Providence ensures that people begin to violate this *halakhab*, and in time what used to be regarded as a violation becomes accepted, even among the halakhists. Those who look at matters from the outside, at the "externals", are of course saddened by the violation, since it appears to be a rebellion against *halakhab*. Yet those who can see what is really happening, who recognize the "inner

content," realize that matters are being directed by the Divine, in what is a necessary adjustment to the halakhic system.

What is particularly noteworthy about the anonymous suggestion is that it is not concerned with *ex post facto* justifications, but is raising the possibility of formal abolishment of rabbinic prohibitions by contemporary rabbis. Think of a rabbinic prohibition that is widely ignored in the traditional community—and in early twentieth-century America there were many—and imagine bringing it before a rabbinic court that would then abolish it.

"What used to be a violation becomes accepted, even among the halakhists."

Not surprisingly, the response to this suggestion was quick in coming, and in the following issue of the journal, R. Jacob Widerwitz, best known for his battles with R. Jacob Joseph over New York City *kashrut*,⁴ published a letter blasting the anonymous author's proposal. Although Widerwitz acknowledged that the Sages formulated all sorts of creative halakhic mechanisms, such as *heter iska* and *prozbul*, and the Sages were also able to retroactively invalidate marriages, "this was fine for them but not us, for if they were men we are like asses . . . and it is great *huts'pab* for contemporary rabbis to find mechanisms [to assist the less religious]."⁵

Widerwitz acknowledges that when there is a dispute among the *poseqim*, contemporary rabbis can try to find support for the most lenient position, but he claims that when the majority of *poseqim* forbid something, then contemporary rabbis' hands are tied. Furthermore, he asks, to whom is this suggestion directed? Those who are

¹ *Kesef Mishneh, Hilkehot Mamrim*, 2:7. This was recognized by the (no longer) anonymous author, see *Ha-Mitz'peh* (Elul, 5670), p. 17. See also Yaakov Blidstein, *Authority and Disobedience in Maimonidean Halakhab* (Hebrew) (Tel Aviv, 2002), pp. 134ff.

² This is an important subject and is the focus of research by Jacob Katz, Haym Soloveitchik, and others, and there is no need to explore it here. I am currently working on an article analyzing this phenomenon in the post-*Shulhan Arukh* era.

³ *Arpelei Tobar* (Jerusalem, 1993), p. 15. The 1993 edition is a reprint and "corrected" version of the original 1914 Jaffa edition. The translation I have given, which comes from the now unavailable original version, is that of Bezael Naor, trans. *Orot* (Northvale, 1993), p. 56. On p. 236 n. 164, Naor shows where the new edition has engaged in censorship.

⁴ See Harold P. Gastwirt, *Fraud, Corruption and Holiness: The Controversy over the Supervision of Jewish Dietary Practice in New York City, 1881-1940* (Port Washington, 1974), pp. 78ff.

⁵ *Ha-Mitz'peh*, Tammuz 5670, p. 5.

violating the *halakhab* are not looking for permission from the rabbis, and those who are not violating it will not listen to any supposed *beter*.

In the fourth issue of the journal, R. Hayyim Hirschensohn (1857-1935) revealed that he was the author of the controversial proposal. In fact, he was quite annoyed that his letter, which was not published in its entirety, had appeared anonymously. He also mentioned that the letter was actually nothing more than the table of contents of his volume of responsa, *Hilkhot Olam*, which survives in manuscript.

Who was this man, who was willing to take such a brave and unconventional stance and defend it against all opposition? What did he stand for and what is his importance? Thankfully, these questions have now been answered in a wonderful new book by David Zohar.⁶

“He declares his support for conscious subjectivity in approaching halakhic questions.”

While Hirschensohn is mostly forgotten today, in his time he was a well-known writer and thinker, for whom controversy became a way of life. Whether it was in his native Jerusalem, where he was placed under *herem* (ban) by the extremist Orthodox,⁷ or the United States, where he served as rabbi of Hoboken, N. J. from 1904 until his death, Hirschensohn always made a mark. Those who know something about Hirschensohn usually fall into one of two camps: (1) Those who are happy he has been forgotten, and (2) those who see his ideas, patiently mapped out in his many works of *halakhab* and thought, as providing the

tools for a new, confident Modern Orthodoxy. It is clearly into this latter category that Zohar falls.⁸

Hirschensohn's proposals in *Ha-Mitzpeh* clearly show the temper of the man. Never before, or since, has a *poseq* been so explicit about his agenda. It was an agenda that he would stick to for the rest of his life, and it was based on a firm conviction that *halakhab* and modernity could coexist. While there have been times when the rabbis had reason to be strict, Hirschensohn felt that in his era, in which the observant were a minority, the proper rabbinic approach was leniency. Never content with just theory, Hirschensohn put his views into practice, most notably in his responsa that are found in *Malki ba-Qodesh*.⁹

Many of Hirschensohn's colleagues argued that *halakhab* needs to be approached "objectively," letting the chips fall where they may. Hirschensohn's opposition to this perspective is not, as many today would have it, that the veneer of objectivity simply masks unconscious subjective elements.¹⁰ Rather, he takes the bull by the horns and declares his support for *conscious* subjectivity in approaching halakhic questions. Just as the *poseq* who deals with a case of *mamzerut* or *agunah* has an agenda, and tries his utmost to reach a lenient conclusion, Hirschensohn adopts this model with virtually every issue he examines, a trait that some will regard as evidence of a lack of seriousness, while others will see it as a refreshing alternative to the apostles of halakhic objectivity.

As the title of Zohar's book indicates, the author is primarily concerned with how Hirschensohn navigates the conflicts ("supposed conflicts"),

⁶ David Zohar, *Jewish Commitment in a Modern World: Rabbi Hayyim Hirschensohn and His Attitude to Modernity* (Hebrew) (Jerusalem, 2003).

⁷ After the ban was proclaimed, R. Ezriel Hildesheimer became Hirschensohn's most forceful defender. See *Rabbiner Ezriel Hildesheimer Briefe*, ed. Mordechai Eliav (Jerusalem, 1965), index, s. v. Hirschensohn, Hayyim.

⁸ In 1988 *Ha-Kibbutz ha-Dati—Ne'emanai Torah ve-Avodah* published the book, *Ha-Torah ve-ha-Hayyim* [Torah and Life], which contains excerpts from Hirschensohn's writings on a host of issues, all of which reflect his modernist sentiments.

⁹ This work, as well as some others by Hirschensohn, is available at www.hebrewbooks.org.

¹⁰ For those who believe that it only halakhic historians who point to unconscious subjectivity in explaining rulings by halakhists, and for those who argue that such an approach is itself invalid, as it distorts how halakhists operate, see the letter of R. Jehiel Jacob Weinberg I published in *Ha-Ma'ayan* 45 (*Tevet*, 5765), p. 3. Here Weinberg states, regarding the ruling of R. Marcus Horovitz of Frankfurt that one may circumcise the son of a Jewish father and non-Jewish mother: "The state of the community [i. e. Frankfurt] and his position therein influenced him against his will and unconsciously." Horovitz' position, which he himself justifies on purely halakhic grounds, is found in his *Matteh Levi* (Frankfurt, 1932), vol. 2 nos. 54-55.

Hirschensohn would say) between modernity and tradition, specifically *halakhab*. Showing a firm grasp of recent discussions of modernity, Zohar is able to situate Hirschensohn in his era and to analyze his approach on a host of issues such as Zionism, secularism, democracy, the role of women, Gentiles, economics, technology, and biblical criticism. Hirschensohn's constant theme is that by returning to the Judaic sources and examining them with an open mind, one finds that "There is no [Torah] law or statute that opposes the ways of true civilization," (Zohar, p. 57, quoting Hirschensohn). What this means is that with few exceptions, all that is regarded as cultured and ethical in modern society is in agreement with *halakhab* and Jewish tradition. Thus, to give one example of many discussed by Zohar, since by the first decades of the twentieth century enlightened opinion in the United States and other countries had concluded that women's suffrage was a matter of basic justice, it was obvious to Hirschensohn that the Torah could not be in opposition to this, and to insist otherwise would bring the Torah into disrepute. While other rabbis looked to forbid various manifestations of modernity, Hirschensohn's vision was of Torah marching hand-in-hand with the best of modern civilization.

"There is no [Torah] law that opposes the ways of true civilization."

Zohar's book is intelligently written and exhaustively researched. The author was also fortunate to have had access to an unpublished halakhic manuscript of Hirschensohn's, which focuses on halakhic solutions to problems brought on by modernity. In what is perhaps the highest compliment I can give, I confess that after reading the work I put aside my own long-time wish to write a book on Hirschensohn. While there are, to be sure, areas where I disagree with Zohar's interpretation, and there are a few (and only a few) valuable sources the author has overlooked (such as the text with which this essay opened), all further discussion of Hirschensohn must take

Zohar's book as its starting point. Although Hirschensohn's popularity has already been on the rise in recent years, together with that of other unconventional Orthodox figures, this book will add further impetus to this trend.

It is necessary to say a few more words about Hirschensohn's conscious search for leniencies in the halakhic process.¹¹ It is not, as some might assume, that he viewed halakhah as a burden and was therefore interested in lightening the load. Rather, he was concerned that in modern times, when only a small minority observes *halakhab* and many who do observe it do so only in part, the halakhic system could be used to delegitimize most Jews. Faced with the phenomenon, Hirschensohn's approach was to stretch *halakhab* in order for it to be more inclusive. Why do that, one may ask; what benefit is there to Judaism by lowering standards? Hirschensohn's reply is that it is not an issue of raising and lowering standards. Rather, *halakhab*, as a living system, must deal with reality. The standards of *halakhab* in eighteenth-century Vilna cannot be the same as in early twentieth-century America.

To take an issue that continues to be at the forefront, Hirschensohn stressed that halakhic responses to women in the twentieth century will by definition be different from those given in an era when women had a vastly different self-perception and place in the world. To take another issue, following in a long tradition of *limmud zekbut* in the halakhic process, Hirschensohn set out to show that even though many Jews were Sabbath violators, since they did so because their monetary circumstances were so pressing, they should not be regarded as willful violators. This allowed them to avoid all the negative halakhic consequences of this categorization.¹² Similarly, Hirschensohn saw Jews, many of whom attended synagogue regularly, shaving with razors. Because he wished dearly to save them from what appears to be an explicit biblical prohibition, he attempted to find some justification so that they could still be regarded as

¹¹ See Ari Ackerman, "'Judging the Sinner Favorably': R. Hayyim Hirschensohn on the Need for Leniency in Halakhic Decision-Making," *Modern Judaism* 22 (2002), pp. 261-280.

¹² Hirschensohn's views in this regard are also analyzed by Zvi Zohar and Avi Sagi, *Circles of Jewish Identity in the Halakhic Literature* (Hebrew) (Tel Aviv, 2000), pp. 147-156, 177-187.

Jews in good standing.¹³ Since his feeling of responsibility for all Jews was so strong, Hirschensohn was forced, as it were, to attempt to find halakhic solutions.¹⁴

Let me offer another interesting approach of Hirschensohn's, which I myself have recently discussed.¹⁵ According to Hirschensohn, there are no principles of faith in the Maimonidean sense, other than the existence of God and His unity. While a standard view in the Orthodox world is that denial of certain theological ideas is heresy, Hirschensohn believed that thoughts alone are never enough to condemn one. Only one who publicly voices his heresy and attempts to get others to follow in this path is to be regarded as outside the fold. Attempts to enforce conformity of thought in theological matters are, he believed, an unwelcome novelty. As he put it:

Whoever reads the Torah of Moses, which is founded on justice and righteousness, grace, truth, and national memories, will find no mention of principles and articles of faith. There is only the unity of God, but no mention of spiritual hopes to take shelter under God's shadow and sit by the right of the heavenly kingdom, or the like. The reader

will thus understand that the Torah did not wish to make these beliefs and hopes part of our legacy, because these are matters for individual feelings and should not be shifted from the private to the public... The primary principles of the Torah are righteous laws and judgments, national memories, and purity of body and spirit.¹⁶

By way of criticism, or better, suggestions for future researchers, let me note that while Zohar's book is certainly where all future analysis of Hirschensohn's halakhic thought will begin, there still remains a good deal that Zohar has not examined. Zohar's interest is primarily in Hirschensohn's conclusions, but the process whereby Hirschensohn reached his conclusions is also fascinating. The way Hirschensohn is able to work within the halakhic process and his most original method of halakhic argumentation still remain to be analyzed in a comprehensive fashion. In addition, Hirschensohn's life still awaits a complete biography, one that will discuss his work with Ben Yehudah in reviving the Hebrew language (these two were the first to establish Hebrew-speaking homes), his journeys in Europe, and his career in the United States.¹⁷

¹³ Hirschensohn's lenient ruling regarding the modern T shaped razors is found in *Hiddushei R. Hayyim Hirschensohn al Masekhta Horayot* (Jerusalem, 1926), part 3, no. 12. For other places where Hirschensohn discusses the issue, see Zohar, p. 354 n. 134. Concerning Hirschensohn's view, R. Menahem Kirschbaum writes: "May this idea be eliminated and never said again, to uproot, Heaven forbid, something from the Torah. Even though the author's intentions were to find a justification (*melammed zekhut*), Heaven forbid to say as such." *Menabem Mesbiv* (Lublin, 1936), vol. 1, p. 327. R. Nahum Eliezer Rabinovitch, *Melumdei Milhamah* (Ma'aleh Adumim, 1993), pp. 275-276, also discusses Hirschensohn's view.

¹⁴ When confronted by R. Zvi Pesah Frank with a medieval authority who apparently held that a Sabbath violator's touch makes wine undrinkable, just like a Gentile, Hirschensohn replied: "If he felt the pain of the parents and children in America, he would have changed his opinion, in order to draw them near and not push them away." *Malki ba-Qodesh*, vol. 4, p. 50. Frank's letter to Hirschensohn is very respectful, and he refers to him, *ibid.*, p. 38, as *Ha-Rav ha-Gaon ha-Mefursam*. However, when R. Ovadiah Yosef discusses this issue, he heaps abuse on Hirschensohn. See *Yabi'a Omer* (Jerusalem, 1986), vol. 1, p. 201.

¹⁵ See *The Limits of Orthodox Theology* (London, 2004), pp. 9-10. For Zohar's comments, see pp. 53-54.

¹⁶ *Musagei Shav ve-Emet* (Jerusalem, 1932), p. 81 (most of this translation is from Dov Schwartz, *Faith at the Crossroads*, tr. Batya Stein [Leiden, 2002], p. 17).

¹⁷ Strangely enough, Zohar seems unaware of the autobiography of Hirschensohn's daughter, Nina Adlerblum, *Memoirs of Childhood* (Northvale, 1999). In addition, it is surprising, to say the least, that Zohar, pp. 29, 30, mistakenly gives the year of Hirschensohn's death as 1932. (From his comments on p. 30 it is obvious that this is not a typographical error.)