

Halakhic Process

Open Orthodoxy

I. The Values of Open Orthodoxy

1. R. Avi Weiss – From Spiritual Activism

Perhaps the most fundamental principle in Judaism is that every person is created in the image of God (Gen. 1:27). Just as God gives and cares, so too do we – in the spirit of *imitation Dei*, "imitating god" – have the natural capacity to be giving and caring. In utilizing this capability, we reflect how God works through people. It is these spiritual underpinnings that are so crucial in carrying out political activism in the moral and ethical realms. The challenge for activists is to ignite the divine spark present in the human spirit and thereby impel people to do good for others. (P. XVIII)

2. R. Avi Weiss – From Women at Prayer

A second area of development, concerns the view of Rav Yosef Dov Halevi Soloveitchik zt"l. In a recent article in *Tradition* by Rabbis Aryeh and Dov Frimer, they concluded that while the Rav did not criticize these groups from a technical halakhic perspective, he had serious public policy concerns about them. The Rav himself, always encouraged me and my colleagues in the rabbinate to pasken for our respective communities on these matters, for he realized that it is the individual Rav who has the responsibility to decide what is best for his community, as he often knows what is best for his constituency. This was the position of Rav Moshe Feinstein, as his grandson Rabbi Mordechai Tendler confirmed to me about two years ago. In any event, as Rav Aaron Soloveitchik has pointed out, public policy can be fluid, and what was a bad policy years ago might now be beneficial, or the contrary. The policy must be evaluated in current terms, not those of decades ago.

With this in mind, it ought also be noted that some of the Rav's hesitation to accept women's prayer groups was based on the fact that these groups may be a first step in moving toward egalitarian practices of non-Orthodox movements. **From that perspective, what the Rav thought to be an issue years ago may not be of any concern to him today.** After twenty years of women's prayer groups, it is clear that these groups are not a slippery slope leading to an embrace of non-Orthodox practices.

An analysis of the biblical verses dealing with the creation of Adam and Eve yields important insights concerning the nature of man and woman. In describing the creation of Adam, the Torah first states: "And God created Adam in his image, in the image of God created He him, male and female created He them" (Genesis 1:27). This description of Adam's creation differs in major ways from the story of the emergence of man and woman as described in the second chapter of Genesis. There, the Torah states that Adam came into being first, with Eve created from his rib (Genesis 2:21-23). One can think of these different accounts as Genesis One and Genesis Two.

...

Genesis Two may be seen as the story of how the human being was first formed: it is an "external" and quantitative description of the mechanical process of creation. Genesis One, on the other hand, deals with the essence of humanity; it is "internal" and qualitative, concentrating on the value of the human persona.

What makes the human being superior to the rest of creation is that every person is created in the image of God. The image of God (*zelem Elohim*) goes well beyond the ability to think, speak, and to choose, but reflects the inherent potential of the human being to emulate God, to transcend limitations and reach nobly to attain Godly heights. *Zelem Elohim* is not the monopoly of one gender; it emphasizes the inestimable value of human beings, states, "male and female created He them" (Genesis 1:27). This underscores the fundamental principle that male and female are of equal importance, neither one greater than the other.

The same principle is enunciated in the Mishnah: "For this reason was Adam created alone...for the sake of peace among people, that one might not say to his fellow, 'My father was greater than yours.'" [=M. Sanhedrin 4:5] We descend from one being. We share a common grandparent. We emerge from the same source. In short, we are all equal.

[In footnote 6... "The goal of mitzvot is to refine character. Women, according to Rav [Aharon] Soloveitchik, are obligated to perform fewer mitzvot because they intrinsically possess "inner spiritual superiority." P. 3]

The equality of men and women does not mean, however, that the two genders are identical. Describing the creation of Eve, the Torah states: "And the Lord God said, it is not good that Adam is alone, let Me make for him and *ezer ke-negdo*" (Genesis 2:18). *Ezer ke-negdo* literally means "helper against him," a contradiction in terms...

A more direct approach, one closer to the *pesbat* (the literal meaning of the text) is to interpret *ke-negdo* as "next to" or "opposite." In effect, God says, "It is not good that Adam is alone; I will create a help (*ezer*) to stand near him (*ke-negdo*), to share life experiences with him on a practical and existential level." From the Torah's perspective, men and women have complementary roles as they related to each other and to the larger Jewish community. (P. 1-4)

<p>3. M. Horayot 3:7 A man takes precedence over a woman in matters concerning the saving of life and the restoration of lost property, and a woman takes precedence over a man in respect of clothing and ransom from captivity. When both are exposed to immoral degradation in their captivity the man's ransom takes precedence over that of the woman.</p>	<p>3. משנה הוריות ג: האיש קודם לאשה להחיות ולהשיב אבדה והאשה קודמת לאיש לכסות ולהוציאה מבית השבי בזמן ששניהם עומדים לקלקלה האיש קודם לאשה:</p>
--	---

4. R. Avi Weiss – "Open Orthodoxy! A Modern Orthodox Rabbi's Creed"

http://www.yctorah.org/component/option,com_docman/task,doc_view/gid,143/

For the Orthodox Right, non-Jews are by and large, accepted, but not embraced. Historically, this attitude may be an outgrowth of millennia of Jewish persecution by non-Jewish governments. Or, perhaps, it emerges from the school of thought that insists that the chosenness means that the soul of the Jew is on a higher level than that of the non-Jew; hence the non-Jew is of lesser value....By contrast, Modern Orthodox teaching is based on the writings of Rav Kook. (412-413).

5. R. Kook on Non-Jewish Souls – Orot Yisrael 5:10

http://www.hartman.org.il/Fck_Uploads/file/havruta+2+LR.81-90.pdf

The difference between the Israelite neshama [supernal soul], its essence, internal longings, aspiration, character and position – and the neshama of all the nations, in their various grades, is greater and deeper than the difference between the nefesh [lower, biological part of the soul] of man and the nefesh of animals. For between the latter there is only a quantitative difference, while between the former there exists a qualitative, essential difference.

II. The Halakhic Method of Open Orthodoxy

6. R. Avi Weiss – From "Open Orthodoxy! A Modern Orthodox Rabbi's Creed"

http://www.yctora.org/component/option,com_docman/task,doc_view/gid,143/

The system God-ethics differs from ethical humanism, which is solely based on what human beings consider to be proper conduct. Human thinking tends to be relative. What is unethical to one person is ethical to another. If, however, the law at its foundation comes from God, it becomes inviolate. No human being can declare it null and void. Heteronomous law assures that one does not succumb to one's subjective notions. **Therefore, the law must be kept even when its ethical underpinnings are not understood** (409).

Thus, Halakhah has a degree of flexibility. While bothered by a system that is external to humankind – the God-given law, *Torah mi-Sinai*, to which Jews are subservient – it also includes laws derived by the rabbis, concerning which there may be more than one view. **It follows, therefore, that Halakhah is a living structure that operates within absolute guidelines, yet one which is broad enough to allow significant latitude for the posek (decisor) to take into account the individual and his or her circumstance. Simply put, within airtight parameters, Halakhah is flexible.**

In the same framework, all those who hold to Orthodoxy contend that "new Halakhah," which emerges constantly from the wellspring of the halakhic process, must always be based on the highest caliber of religio-legal authority. There must be an exceptional halakhic personality who affirms the new ruling on the grounds of sound halakhic reasoning...

The belief in *Torah mi-Sinai* is, for all Orthodox Jews, the foundation of faith and at the core of the Halakhic process. Conservative Judaism does not subscribe to this teaching. Moreover, in the area of rabbinic law, we Orthodox – Modern and Right alike – contend that legal authority is cumulative, and that a contemporary posek can only issue judgments based on a full history of Jewish legal precedent. In contrast, the implicit argument of the Conservative movement is that precedent provides illustrations of possible positions rather than binding law. Conservatism, therefore, remains free to select whichever position within the prior legal history appeals to it. Likewise, we adhere and turn to the wisdom of the most distinguished religious-legal authorities in making Halakhic determinations. Not so the Conservatives. Truth be told, when the Conservative movement faced some of its most controversial "new *halakhot*," such as the ordination of women, it turned away from its own Talmudic experts in Halakhah, who had almost universally rejected the reasoning upon which this new practice was to be based, and who have since virtually all left the faculty of the Jewish Theological Seminary (411).

Even in purely halakhic areas, we part company with the understanding of da'at Torah. For the Orthodox Right, da'at Torah means that decisions made by the rabbis close off all discussion; in Modern Orthodoxy on the other hand, it sets the foundation from which discussion ensues. Dr. Lawrence Kaplan writes: "While posek always leaves room for more discussion, for further

analysis, and for responsible criticism, the whole purpose of da'at Torah is to close off and suppress discussion. It enables one person or one group to impose ex cathedra, a personal, particular viewpoint on all persons and groups – and no questions asked!"

In sum: for we Modern Orthodox, if da'at Torah means to revere the wisdom of our great rabbinic authorities, like Rav Yosef Dov Soloveitchik, of blessed memory, we believe in it. If, however, it means to follow blindly the great rabbinic authorities in non-halakhic areas or to close off discussion in purely halakhic areas, we disagree. We respect Rav Soloveitchik's da'at Torah precisely because he was a person of enormous human wisdom and insight. He understood that da'at Torah was not to be imposed; that it was to be persuasive rather than authoritarian (412).

7. R. Avi Weiss – "Mesorah and Making Room: A Journey to Women's Spiritual Leadership" Times of Israel – June 13, 2013

<http://blogs.timesofisrael.com/mesorah-and-making-room-a-journey-to-womens-spiritual-leadership/>

Mesorah – tradition – is commonly associated with the giving and transmission of Torah. For some, it is a meta-halakhic concept; that is, regardless of what the halakha says, there is a past tradition that must be taken into account.

Now of course past tradition, consideration of time honored practices, is of tremendous import, as the Torah states, "Ask your father and he shall tell you; your grandfather and he shall say to you." (Deuteronomy 32:7) Or as Proverbs writes, "Listen, my child, to the discipline of your father and do not forsake the instruction of your mother." (Proverbs 1:8)

But that's only one half of the equation. One is seriously mistaken to think that mesorah only means that everything we do is cemented in the past. The Talmud makes this point when it records that unlike his predecessors, Rebbe (a Talmudic scholar) did not obligate that tithes be taken on fruits and vegetables grown in Beit She'an, maintaining that for tithing, Beit She'an was outside of Israel. His brothers were incensed: "a place where your ancestors acted prohibitively, will you act permissively?"

Rebbe responded: makom hinihu li avotai lehit'gader bo – my ancestors have left room for me in which to distinguish myself (Hullin 6b, 7a). In other words, it's been left over for the next generation. No generation can do all of the work that is necessary. **It is not only the right, but the obligation of each generation le-hit'gader bo —to distinguish itself.** Not to distinguish itself in an arrogant sense, but in the sense of continuing the work of not being frozen in the past and thus taking halakha to even greater heights. Interestingly, Rebbe used the word le-hit'gader from geder, fence. Although permitting the produce without tithing, Rebbe declares, "I have done so within proper parameters."

It follows, then, that mesorah is not solely rooted in the past. Rather our mesorah is that, within proper parameters, we ought innovate to address the issues of our time and continue the work. This innovation is not straying from mesorah, it is demanded by it. This involves two steps.

The first step is to assess the law and evaluate whether it is in conflict with other central principles of Torah. Consider, for example, the Torah's position on polygamy, slavery or yefat to'ar, the laws of a female war-captive. These laws seem in conflict with other values of Torah, values like tzelem Elohim – every human being created in the image of God or kavod ha-bryot – human dignity or kedoshim ti'hiyu – and you shall be holy.

If conflict exists, mesorah includes a second step: a systematic means by which halakha can evolve. The Torah makes this very point when it declares that in every generation, when challenging issues arise, one is to go to the judge of his or her generation. (Deuteronomy 17:8-9) Mesorah includes a sophisticated network of rabbinic law, some interpretive (dinin she-ho'tzi'u al darkei hasevara) and some legislative (takanot u'gezeirot). After an extensive, in-depth analysis of the law, new applications may be possible.

III. The Limits of Open Orthodox Theology

8. Open Letter Sunday October 19, 2008

http://hirhurim.blogspot.com/2008/10/yct-statement_19.html

Rabbi Darren Kleinberg was ordained as a rabbi by Yeshivat Chovevei Torah, an Orthodox rabbinical school, in June 2004. Since then, he has been engaged in many positive endeavors as a rabbi on behalf of the Jewish people. However, recently, **Rabbi Kleinberg has participated on a non-halakhic beit din for conversion.** This violates the standards and principles of Yeshivat Chovevei Torah and YCT categorically rejects this action. Rabbi Kleinberg's statements and actions should not be assumed to be representative of YCT's positions and principles.

Rabbi Avi Weiss
Founder and President

Rabbi Dov Linzer
Rosh HaYeshiva and Dean

IV. Open Orthodoxy and the Tradition of R. Joseph B. Soloveitchik

9. R. Soloveitchik – The Common-sense Rebellion Against Torah Authority

<http://www.scribd.com/doc/13615801/Rav-SoloveitchikThe-Commonsense-Rebellion-Against-Torah-Authority>

Similarly, the Oral Law has its own epistemological approach, which can be understood only by a lamdan who has mastered its methodology and its abundant material. Just as mathematics is more than a group of equations and physics is more than a collection of natural laws, so, too, the Halakhah is more than a compilation of religious laws. It has its own logos and method of thinking and is an autonomous self-integrated system. The Halakhah need not make common sense any more than mathematics and scientific conceptualized systems need to accommodate themselves to common sense. When people talk of a meaningful Halakhah, of unfreezing the Halakhah or of an empirical Halakhah, they are basically proposing Korah's approach. Lacking a knowledge of halakhic methodology, which can only be achieved through extensive study, they instead apply common-sense reasoning which is replete with platitudes and clichés. As in Aristotelian physics, they judge phenomena solely from surface appearances and note only the subjective sensations of worshippers. This da'at approach is not tolerated in science, and it should not receive serious credence in Halakhah.

Such judgments are pseudo-statements, lacking sophistication about depth relationships and meanings. The approach of Moses prevailed. The survivors of the catastrophe which befell Korah's group later conceded that, in the words of our Sages. "Moses is truth and his interpretation of Torah is truth-and we are liars" (B. Bat. 74a). This judgment is still valid. In our day, we are witnessing a resurgence of strength among those religious groups that are committed to the Oral Law as a hokhmah, and who therefore recognize Torah scholars, Gedole

Yisrael, as the legitimate teachers of Israel. Common sense can only spread confusion and havoc when applied to the Halakhah, as it does with all specialized disciplines.

10. R. Soloveitchik – Halakhic Man

Halakhic man is a man who longs to create, to bring into being something new, something original. The study of Torah, by definition, means gleaning new, creative insights from the Torah (*hiddushei Torah*). "The Holy One, blessed be He, rejoices in the dialectics of Torah" [a popular folk saying]. Read not here 'dialectics' (*pilpul*) but 'creative interpretation' (*hiddush*). This notion of *hiddush*, of creative interpretation is not limited solely to the theoretical domain, but extends as well into the practical domain, into the real world. The most fervent desire of halakhic man is to behold the replenishment of the deficiency in creation, when the real world will conform to the ideal world and the most exalted and glorious of creations, the ideal Halakhah, will be actualized in its midst. The dream of creation is the central idea in the halakhic consciousness – the idea of the importance of man as a partner of the Almighty in the act of creation, man as creator of worlds. This longing for creation and the renewal of the cosmos is embodied in all of Judaism's goals. And if at times we raise the questions of the ultimate aim of Judaism, of the telos of the Halakhah in all its multifold aspects and manifestations, we must not disregard the fact that this wondrous spectacle of the creation of worlds is the Jewish people's eschatological vision, the realization of all its hopes (99).

V. Bibliography

Soloveitchik, Joseph B. *Halakhic Man*. New York: The Jewish Publication Society of America, 1983.

Weiss, Avraham. "Open Orthodoxy! A Modern Orthodox Rabbi's Creed." *Judaism* 46.4 (1997): 409-21.

Weiss, Avraham. *Women at Prayer: A Halakhic Analysis of Women's Prayer Groups Expanded Edition*. Hoboken, NJ: Ktav Publishing House, 2001.

Weiss, Avraham. *Spiritual Activism: A Jewish Guide to Leadership and Repairing the World*. Woodstock, VT: Jewish Lights Publishers, 2008.