

Halachah and History: Separate Realms

By Louis Jacobs

Whether the traditional *halachah* has been a dynamic and developing or static and unchanging system is not a *halachic* but a historical question, to be investigated by the standard employed in scholarly research. These methods, originating in the 19th century, were not available to the great *halachists* of the pre-modern era. The result has been (it is to this, I take it, which Singer wishes to draw our attention) that the *halachists* proceed as if the *halachah* were an exact science, its practitioners untainted by any subjective or external considerations.

While recognizing this, the historian is also fully aware that, whatever the *halachists* say about their work, they are not disembodied spirits operating with bloodless abstractions, but are influenced, consciously or unconsciously, by life's realities in the concrete situations in which they find themselves. To give one example among many, ostensibly the *halachic* debate over the means of circumventing the prohibition of agricultural labor during the sabbatical year in *Eretz Yisrael* (the Land of Israel) is of exactly the same order, say, as a question about whether a chicken with a particular defect is kosher. Yet it is obvious that the real motivation on both sides was theological. Rav Kook, who advanced *halachic* reasons for permitting the sale of the land to a non-Jew for the purpose, [felt] the need to come up with a conclusion that would not frustrate his Zionist aspirations; his opponents [arrived] at their conclusion because they were convinced it was more important to have the most cogent demonstration of Jewish faith and trust in God than to encourage the struggling settlers.

Rav Kook knew that only the permissive ruling was acceptable if his vision was to be realized. His opponents had a very different vision, one that demanded a strict ruling. To be sure, each side presented sound *halachic* arguments, but it was not the arguments which led to the conclusions; it was the conclusion which led to the arguments.

Value Judgments And *Halachah*

For historically minded, observant Jews, faithful to the *halachah* as the most distinctive feature of Judaism, the implications are shattering. If the *halachists* of the past were not only concerned with what the law is but with what it should be, if they were not only academic lawyers but also practical legislators, why should the process be called to a halt because present day *halachists* are hostile to historical investigation? If the *halachists* did base their rulings on what the law should be, on values other than that of pure legal theory, why must contemporary *halachists* be inhibited from reinterpreting the law when it no

longer serves those values or where values have changed? It will not do to reply that value judgments must never be introduced into the *halachic* process. For one thing, such a statement is itself a value judgment and, for another, history has shown that pan-*Halachism*, as Heschel felicitously dubbed this attitude, was not adopted by the *halachists* themselves.

As long as fundamentalism reigns, as it does, at least on the surface, in *halachically* committed circles, there is no hope of a solution. Modern critical investigation is not in itself incompatible with devotion to the *halachah*. On the contrary, once the dynamism of the traditional *halachah* is uncovered, it becomes a powerful tool for the preservation of the *halachah*, exhibiting as it does the flexibility and capacity for adaptation without which the *halachah* would have become fossilized. The possibility and desirability of change, where change is needed, is then not seen as a sop to modernity, but as an integral part of the *halachic* tradition. The issue is a theological one. It amounts to whether or not the human role in revelation is acknowledged. When the advocates of change and the upholders of the dogma of changelessness argue for their respective viewpoints, it is this that ultimately they are arguing about.

Separate Domains For Rabbis And Scholars

Rabbi Meir Berlin tells, in his autobiography, of a young would-be rabbi who asked Reb Chayim Brisker to what a rabbi should direct his efforts. "Let him busy himself in communal activities," replied Reb Chayim. "As for *paskenen shaales* (rendering decisions in Jewish law), he should leave that to the Rabbonim!" Many of the *yarmulka*-wearing scholars, to whom Singer refers, evidently hold that scholarship is for the academics alone and of no relevance to *halachic* decision-making. That must be left to the rabbis. The rabbis, in turn, leave scholarship to the academics, whose work can be tolerated provided it does not dare to encroach on their domain. There is little evidence of any forthcoming rapprochement. Until there is, it is somewhat futile to speak of changes in the *halachah*. Singer rightly hints at the need for Jews who observe the *halachah*, but cannot accept the fundamentalistic premises on which it is now based, to declare openly where they stand. If they do, they may discover to their surprise that their fears that it will lead to *halachic* anarchy are unfounded and, who knows, it may even happen that the *halachists* will be moved to admit: "This is what we believed all along!"