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"Taking Responsibility for Torah"

DO REAL CASES MAKE BAD LAW?

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After the death of Rabbi Seligman Bar (Yitzchak Dov) Bamberger (the Wurzburger Rav) in 1878, his son Rabbi Moshe of Kissingen inherited the manuscripts of his father's practical halakhic responsa. He was troubled about whether to publish them. The Torah in them was certainly publishable and would be eagerly received. But his father had asked him not to publish, because he held that responsa *halakhab lemaaseh* were less reliable than works of pure scholarship. So Rabbi Moshe turned to two of the great poskim of his time, Rabbi Naftoli Tzvi Yehudah Berlin (Netziv) and Rabbi Yitzchok Elchonon Spector.

The question he asked has at least three distinct components. The first is subjective and pastoral: How can I live with myself if I disobey my late father's instructions, and yet how can I let parts of his contributions to Torah die with him? The second is objective and pragmatic: Does my obligation of *kibbud av* forbid me to do what I would otherwise think is right? The third is intellectual: Is my father's opinion about the relative worth of responsa and novella correct?

Underneath it all was a worry: Maybe my father's opinion was correct about his own responsa, and publishing them will damage rather than enhance his legacy.

Rabbi Spector's response (printed in *Zekher Simkhah* p. viii, h/t *ויקיפדיה*) was fundamentally pastoral. He saw no point in addressing the intellectual questions; what mattered was making the responsa publicly accessible while keeping the son whole. So he opens by expressing his hesitancy about getting involved lest he act against the true wishes of the late *tzaddik*, and he pleads illness to avoid examining the merits of the work (claiming that he isn't even able to read the galleys of his own responsa!). His practical suggestion is that the son write a foreword stating his father's wishes that no one rely on the responsa without examining the evidence for themselves (if they are

competent to do so), and that they are intended to spur thought rather than to preempt it. Rabbi Spector cites as precedent that the Shakh's introduction to *Yoreh Deah* and the Pri Megadim's introduction to *Hilkhos Pesach* each demand that readers swear never to rely on their conclusions.

Such introductions rarely succeed. The positions of Shakh and Pri Megadim themselves are often cited for halakhic authority without reference to their reasoning, and Rav Moshe Feinstein introduced his first book of responsa with a similarly futile disclaimer. I'm confident that Rabbi Spector knew this. Perhaps his pastoral approach failed because Rabbi Bamberger could not suspend his disbelief, and that's why the responsa were first published many years later, by a grandson.

Or perhaps it was Netziv's fault. He tells Rabbi Moshe directly that his father was simply wrong (*Meishiv Davar* 1:24):

"Regarding Your Honor's presentation of your father zt"l's opinion not to print the responses he wrote *halakhab lemaaseh*, on the ground that one ought not rely on a responsum as much as on what is written in the course of studying a topic, when you get to know it more comprehensively and accurately than you do at a time that someone comes to ask you something. He rested his words on the consensus of poskim to rely on the *Piskei HoRosh* more than on his responsa, and also on Chazal's statement that "One does not learn halakhah from what was ruled in practice." That is the substance of what you wrote in the name of your father zt"l.

But in my impoverished opinion, the words are utterly incorrect in their reasoning:

On the contrary, at the time (poskim) respond *halakhah lemaaseh* – they reach the depth of the matter than when the topic come up in the course of learning, and also there is more *siyata dishmaya* (assistance from Heaven) in the practical moment, and Chazal said in Ketubot (60b) that *siyata dishmaya* is very helpful in issuing correct ruling, and it also says in Bava Batra (130b) that “One does not derive Halakhah from learning nor from what was ruled in practice, rather one must wait until one is told “This is *halakhah lemaaseh*.” See Rashbam’s commentary there. Similarly, in Sanhedrin (86b) regarding the Rebellious Elder: “If he taught in the manner he was used to – he is exempt; but if he ruled *lemaaseh* – he is liable,” so we see that ruling *lemaaseh* is more serious.

As for the consensus of the poskim that we rely more on the *Piskei HoRosh* than on Rosh’s responsa when they differ – this is not a reasoned position, but rather a tradition from Rosh’s son Rabbi Yehudah, and presumably his son knew that the *psakim* were written later than the responsa, and ROSH had recanted . . . so Torah that emerges in the moment of responding *lemaaseh* is stronger and more closely coordinated with truth than what emerges from a person’s mind while learning. The great scholars who did not wish to publish their responsa had a different rationale; they knew that one is entitled to place **more** reliance on responsa, and they did not wish (the responsibility of having) others rely on their opinion, whereas they knew that people do not rely on halakhic novella, and so were not concerned about publishing them.”

I think Netziv clearly has the better case based on precedent. For example, “We do not derive halakhah from the ruling in a practical case” probably refers to instances where we know the ruling but not the reasoning, so what is unreliable is our interpretation rather than the ruling itself.

However, Rabbi Bamberger may have known himself well. I suspect that he was making a subjective rather than an objective claim; **my** teshuvot are not as solid as **my** scholarship.

Netziv and Rabbi Bamberger have been on my mind during this crisis as I read some great contemporary collections of in-the-moment responsa, and make some efforts to generate my own. Some people’s minds are sharpened by urgency, and their conclusions and reasoning become wonderfully solid and consistent. Others meet their communal responsibilities but are scrambling to match their own usual standards of clarity or judgment. We owe them all gratitude. We also owe them all the effort to evaluate their reasoning rather than uncritically granting them authority, and therefore the whole burden of responsibility. One of the best elements of halakhic leadership during this crisis has been the way that public halakhic pronouncements have often been issued only after broad consultation, and then modified in response to practical feedback.

Moreover, as Netziv sets out in the magnificent introduction to his commentary on Sheiltot d’Rav Achai Gaon, some Torah scholars are much better at making decisions than at explaining them, and others are much better at explaining decisions than at making them.

I don’t know whether Rabbi Bamberger fell into either group. But some rulings by necessity are issued without the opportunity for comprehensive research or unhurried reflection. Responsa *lemaaseh* are often written after the fact, and always have been. Rabbi Bamberger could always have taken the time later to write comprehensive responsa.

But it’s very hard to do objective research once one has ruled in practice. I wonder whether Rabbi Bamberger suspected himself of defensiveness, and feared that his responsa sometimes drew the target around the arrow, whereas his scholarship drew the target before the arrow was shot. That would be only human.

But if that was his concern, I’m glad in the end that it was not heeded. We have no choice but to look to human leaders. But we are blessed when our leaders are conscious of their humanity, and the Torah of such leaders should long endure.