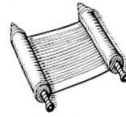


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IS THE NEW BIBLICALLY FORBIDDEN?

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One of the great if bitter “in jokes” of Jewish modernity was Chatam Sofer’s use of the phrase “the new is Biblically forbidden everywhere” to combat Reform innovation. The first level of the joke was that Chatam Sofer was rhetorically repurposing *Mishnah Orlah* 3:9, where the same phrase should be translated “Grain of the new year is forbidden (until *chol hamoed Pesach*) even outside Israel.” The second level of the joke is that while the consensus medieval position was that the *Halakhab* follows this *Mishnah*, the practice of even the fully observant community has generally been otherwise, such that many great decisors have been compelled to produce *limmudei zekbut* for them. So *chadash* is a classic example of a law where popular practice has overwhelmed the written tradition, and Chatam Sofer was offering a creative interpretation – a “*chiddush*” – and this became the slogan for a static, book-driven vision of Judaism.

And of course this was not Chatam Sofer’s only *chiddush* – the third level of the joke is that Chatam Sofer was a remarkably creative Torah scholar. The fourth and final level of the joke, if I am not making an unfair presumption, is that most of those opposing Chatam Sofer did not understand that it was funny, and did not realize that he was being creative; they were wholly unaware of the *Mishnah* and of the history of that *Halakhab*. This is still true today.

When it stops being funny, of course, is when those who support Chatam Sofer stop recognizing the humor, and genuinely believe it to be an absolute statement, even if they know the *Mishnah* and the history. This is an unavoidable risk of absolutist rhetoric. I presume Chatam Sofer was aware of the risk that his own words could eventually be used to stifle

the people most like him, brilliantly creative, deeply aware of context, fully committed to *Halakhab*, and capable of utilizing that creativity so that *Halakhab* could function effectively in every new context but thought it a risk worth running.

The contemporary figure most comparable to Chatam Sofer in this respect was the Rav zt”l, who developed a variety of remarkably original conceptions of the extent and nature of tradition. One of these is highlighted on a 2013 *Hirburim* blogpost, where Rabbi Gil Student cited from a lecture by the Rav, in the context of opposing a particular innovative halakhic proposal: “Whoever doubts the Sages, taints them with an accusation like misogyny, doubts Judaism.” He writes:

R. Soloveitchik inferred this strong position from an unusual phrase in Rambam’s Mishneh Torah (Hilkhos Teshuvah 3:8). Rambam states that anyone who denies the Oral Torah or “contradicts its transmitters” (makhchish magideha) is classified as a heretic. What constitutes contradicting the transmitters of the tradition? R. Soloveitchik explained that ...[w]ho[m]ever rejects the great sages of every generations, even post-Talmudic, rejects the tradition they embody.

Rabbi Student links to Rabbi Steven Weil’s write-up of the lecture, which includes the following: The Rav clearly stated,

Even those who admit the truthfulness of the Torah Shebe’al Peh but who are critical of chachmei Chazal as personalities, who find fault with chachmei Chazal...which actually has no impact upon the Halacha; nevertheless, he is to be considered as a kofer [denier].

The *chachmei hamesorah*, the greatest *talmidei chachamim* of all times whose personalities and outlooks were formed by the sacred texts they wholly embraced, represent Torah and one who rejects them denies all. In Rabbi Student’s words:

Historians and R. Soloveitchik enthusiasts may find it interesting that this was not a new interpretation innovated for this occasion...R. Soloveitchik had

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published it 30 years earlier. In a 1943 lecture in memory of his father, R. Soloveitchik offered this explanation as part of a lengthy discussion of the laws of declaring the new month...R. Soloveitchik distinguished between laws that the Sages received as tradition and those they derived through logic. Rejecting the Oral Torah refers to the tradition. Rejecting the Sages means disagreeing with their logic, their judgment as presented in the Talmud. From this limited requirement, R. Soloveitchik deduces that rejecting the Sages themselves constitutes heresy. He then applies it to the Sages in general, presumably even post-Talmudic bearers of the tradition. Someone who rejects their judgment, rejects the tradition. This final step reflects R. Soloveitchik's view 30 years later, when he articulated it in a communal controversy.

Rabbi Student's last paragraph very usefully invites us to find the boundary, and the gaps, between the Rav's creative halakhic argumentation and his rhetoric as reported. The Rav's article explains why Maimonides believed that a formal sanctification of the New Moon continued in some sense after the exile and eventual cessation of the Sanhedrin, even though that sanctification was one of the Sanhedrin's powers. His solution is that this power of the Sanhedrin stemmed from its role as the embodiment of tradition, and as such could be assumed by another such embodiment. He defines, or at least recognizes, such an embodiment by another of its powers: the capacity to legislate for the whole Jewish people. The Rav recognizes that to "embody tradition" must mean more than "to pass tradition down accurately," otherwise any two witnesses should be sufficient, and therefore he argues that "transmission = מסורת" is a qualitatively distinct process from learning. He doesn't rigorously define that distinction in the article. The Rav substantiates his claim that a non-Sanhedrin body can "embody the tradition" via a close but creative reading of *Hilkehot Teshuvah* 3:9:

Three are called "deniers of Torah": 1) Who says that the Torah is not from Hashem . . . 2) and similarly, who denies its interpretation, namely the Oral Torah, and (who) contradicts its speakers, such as Tzadok and Boethius 3) and who says that the Creator exchanged this mitzvah for another mitzvah.

The Rav argues that the parenthesized (who) above should be inserted, so that "contradicting its speakers" becomes an independent form of denying the Oral Torah. This may in itself be a *chiddush*. Granting the literary point, however, how can one "contradict its speakers" without simultaneously denying the interpretations they offer? The Rav answers that without this additional clause one might think that the obligation of obedience applies only to laws received as tradition; however, the requirement not to "contradict its speakers" extends the obligation to laws derived from reason

and not received as tradition. In other words, to embody tradition is to have the authority to creatively extend it. The Rav then comments that this applies even outside of Israel, to the Sages of the Babylonian Talmud, because they spoke for and were recognized by the whole Jewish community.

Let us take all of this as given. What is explicit within the Rav's article is that: a) "contradicting its speakers" applies to a collective group of 'speakers' whose legislative authority is recognized by the entire Jewish community. It cannot apply to individuals or subgroups nor apply to any post-Talmudic group; b) "contradicting its speakers" refers to denying the authority of a legal conclusion, and in no way refers to evaluations of the personal piety, integrity, or morality of either the collective or individuals or subgroups within it; c) "contradicting its speakers" is a hyper-traditionalist position, which denies Torah authorities the authority to innovate within the context of Tradition, rather than a reform position.

Going back to Rabbi Student, my take is that the Rav did not "deduce" any of these extensions from his earlier article, any more than Chatam Sofer "deduced" his anti-Reform position from the *Mishnah*. Rather, the Rav used *lomdishe* language and ideas as the basis of rhetoric in the same way that Chatam Sofer used Mishnaic language and ideas. Furthermore, I find insufficient basis in Rabbi Weil's report for Rabbi Student's claim that the Rav extended his *chiddush*, even rhetorically, to "post-Talmudic bearers of the tradition."

Finally, it should be obvious that there is a difference between criticism, even robust criticism, and rejection. Now one doesn't need the Rav's *chiddush* to recognize that there is a point at which someone has been so creative, changed so much or so radically, that they can no longer legitimately claim to be connected to the past, and that Torah authenticity requires such a connection to the Torah past. It also seems patent to me that authentically continuing a tradition requires genuine reverence for those who transmitted it.

But not everything new is forbidden everywhere by the Torah, and Chatam Sofer neither expected nor wanted knowledgeable Jews to believe otherwise; nor did the Rav expect or want his creative rhetoric to become a tool for enforcing a stultified rabbinic conformity, or for creating an intellectual prison bounded by his own theological and halakhic positions, with his students forced to become wardens, inmates, or both. *Shabbat Shalom!*

**Adapted from a 2013 dvar torah by Rabbi Klapper*

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