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"Taking Responsibility for Torah"

MAY A CHAZAN LEAD HIGH HOLIDAY SERVICES FROM A WHEELCHAIR? PART THREE

Rabbi Aryeh Klapper, Dean

Dear Rabbi:

Mr. Toviab Goodman has davened 1st day Rosh Hashannah Shacharit and Yom Kippur Neilah for our shul since its founding in 1993. However, he suffered several health setbacks this year, and now is in a wheelchair full time. Should he continue to serve as shaliach tzibbur, or should we replace him with someone who is able to stand?

Sincerely,

The Members of the Ritual Committee, Congregation Mevakshei Psak

TESHUVAH PART 3 – METHODOLOGICAL EXCURSUS

Halakhic data can be arranged synchronically or diachronically. Synchronic means presenting all positions as if they exist at the same time; diachronic means showing how positions originated, were eliminated, developed or changed over time.

A certain element of diachronicity is ineluctable in current Orthodox halakhah. We have a structure of authority that is popularly understood to give more authority to a precedent the further back it goes. This is not quite true; what is generally true is that halakhah gives more formal authority to texts from an earlier era than texts from a later era. Roughly speaking, there are four eras: Tannaim, Amoraim, Rishonim, and Acharonim.

Halakhah actually has a counter-principle known as *halakhab k'batrai*, meaning that the law follows the latest authority within every era in a dispute. However, this principle does not seem to operate well in the era of the Rishonim, which from a halakhic perspective ended more with a whimper than a bang. The extent to which it will operate regarding the period of the Acharonim is in question; we'd first have to settle whether that era has ended.

All these principles functioned on the presumption that the halakhic world could reasonably be understood as revolving on a single axis. Thus we speak of "the Rishonim" and "Acharonim" as if the cultural progression of medieval Judaism in Yemen and France were perfectly coordinated. Of course, this was not the case. But each culture could imagine that it was. When cultures met, either one attained dominance, or they negotiated a rough compromise, so that the presumption could be plausibly maintained.

Why should legal authority be affected by who comes first? The notion of descending authority, in Hebrew *yeridat hadorot* (which Rabbi Norman Lamm brilliantly termed "the degeneration theory"), is rooted in the sense that Torah still emerges out of the experience of Sinai, which grows more and more attenuated over time. The notion of ascending authority uses the imagery of *nanas al gabei anak*, the dwarf standing on a giant's shoulders. Since we believe in the possibility of Redemption, progress must be possible. How can progress be possible, if we are moving further away from Sinai? The answer is that our contributions never start from scratch; we build on the advances of our greater predecessors.

Standing on the intellectual shoulders of our predecessors requires us to be aware of their work. Here is where modernity and what we might call the "Standard Model of Halakhah" can come into conflict. A combination of astounding wealth and the growth of information technology means that the contemporary talmid chakham has access to a broad array of past texts and halakhic cultures that did not make it into earlier cuts of the tradition, or at least of his or her tradition.

Moreover, it is much easier than before to make a convincing argument that a later source was unaware of an earlier source, or had access only to corrupted versions of that source.

Why does this matter?

Halakhah has a category called *toeb bidvar Mishnah*, which roughly means that a halakhic ruling can be declared null and void if its author demonstrably was unaware of a relevant precedent that, had he or she known it, would or should have changed the ruling. This demonstration is difficult to accomplish directly; how can you know what you yourself would have thought, let alone what someone else would have thought? So we adopt essentially a "reasonable halakhist" standard, namely that if in our opinion a reasonable halakhist would or should certainly have changed his or her mind, then the ruling can be declared null and void.

Now we have access to much more material of the Rishonim than any of the later Rishonim or early Acharonim did. By the formal rules of halakhah as we understand them today, this means that *halakhab k'batrai* does not apply; instead, if an acharon decides an issue differently than it was previously decided by a rishon, but was unaware of that rishon's decision – the acharon's decision is null and

void, and certainly we should pasken like the rishon rather than the acharon.

All this brings us back to our specific question of the shaliach tzibbur who uses a wheelchair.

In the previous two sections of this teshuvah, we studied three strands of the tradition.

The 13th century R. Meir of Rothenburg (Maharam) probably ruled that the disabled are ideal chazzanim. We noted that his responsum exists in at least two versions, only one of which explicitly addresses disability, but thought that the version which does so is likely correct. This version, printed and heartily endorsed by Maharshah in the 16th century, is the one cited by all subsequent authorities.

The 15th century R. Israel (Mahari) of Brona conceded that there was no halakhah barring a disabled shaliach tzibbur. He nonetheless opposes appointing a disabled man as the official shaliach tzibbur, rather than to lead services ad hoc, and, all things being equal, would rather have services led by a man who has none of the physical conditions or characteristics that disqualify a kohen from serving at sacrifices in the Temple. He cites as precedent the 13th century Or Zarua, without a specific source; we were not convinced that Or Zarua took any relevant position.

R. Israel seems wholly unaware of Maharam. We can plausibly conjecture that he would have changed his mind had he known of Maharam. So on a halakhic level, we are entitled to rule like Maharam even though a later rishon ruled otherwise.

It is also true that Maharshah was unaware of Mahari Brona. However, he would likely have made the same calculation we did, and thus discount him.

The 17th century Chavot Yair agrees with Mahari Brona that there is no halakhic issue, and furthermore rejects any analogy to the Temple service. He comes up with a host of independent reasons, however, for reaching Mahari Brona's conclusion.

Chavot Yair makes a reference to a prooftext cited by Maharam, and soundly rejects its relevance, but he nowhere indicates awareness that Maharam's authority was relevant to the issue. Can we presume that he was unaware of Maharam's ruling, and that he would have changed his mind had he been aware of it? It seems to me at least as likely that he would have developed a compromise similar to that of Mahari Brona.

In the 20th century, Rabbi Yitzchak Zilberstein (Chashukei Chemed to Berakhot 39a) casually introduced an early 13th century (pre-Maharam) source that had either been overlooked or been unavailable to all previous decisors. Sefer Chasidim (Margoliot edition) #5756 reads as follows:

אחד זקן היה רגיל להתפלל ביום הכפורים
(שנה אחת לא היה חזק לעמוד) (ולהתפלל בעמידה)
אמרו מקצתם
כיון שאין לנו מוטב להתפלל בישיבה
אמרו הזקנים
כיון שאינו יכול לעמוד - יתפלל אחר אף על פי שאינו כל כך הגון
פן ילמדו ממנו אחרים ויתפללו מיושב
'ואשר כתוב (ש"ב ז' י"ח) וישב (דוד) לפני ה'
ישב לבו בתפלה
(ואמרו במכילתין ויקחו אבן וישימו תחתיו וישב עליה) (שמות י"ז י"ב)
ויקחו אבן אלו האבות
וישימו תחתיו אלו מעשה האבות
וישב עליה אלו מעשה האמהות
הרי לא ישב ממש
*An elderly man regularly served as shaliach tzibbur on Yom haKippurim
One year, he was not strong enough to stand (throughout the prayer)
Some of the (?congregants?) said:
Since we have no one equal to him, it is best that he lead services while seated.
The elders said:
Since he cannot stand – let another lead, even though he is not as appropriate
lest others learn from him to pray while seated
As for 2 Samuel 17:12, He yashav=sat before Hashem –
Translate instead he yashav-settled his heart in prayer.
and Mekhilta to Shemot 17:12 They took a rock and they placed it
under him and he sat on it
They took a rock – meaning the forefathers;
they placed it under him – these are the deeds of the forefathers
he sat on it- these are the deeds of the foremothers
so (Moshe) never actually sat.*

If one takes Sefer Chasidim as a halakhic source, must we take it as halakhically dispositive? Note that Sefer Chasidim is not addressing the question of the nature of the disabled body; he is concerned with the actual inability to stand. Perhaps Maharam would concede in such a case; we cannot prove otherwise, as Maharam's case so far as we know involved a chazzan whose disability (an arm injury?) had no effect on any of the ritual of prayer. Very likely Mahari Brona and Chavot Yair would agree that this specific form of disability would pose a formal halakhic difficulty.

This week's section has treated halakhah as if it were purely a formal game – authority is determined by rules, and whoever has more authority, wins. But that is far from an accurate portrait of halakhah. What about our own intellectual evaluation of the evidence provided in precedents? What about values? Moadim lesimchah and please look for Part 4 next week.