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### HALAKHAH AND CHANGE: A DVAR TORAH L'ILUI NISHMAT RAV GEDALIA DOV SCHWARTZ ZT"l

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The passing of Rav Gedaliah Dov Schwartz zt"l leaves a void in American halakhah. In some ways it parallels that left by the passing of Rav Ovadiah Yosef z"l in world halakhah. Rabbi Schwartz was the American posek who resolved difficult agunah and personal status issues, often in the best way possible, meaning before they became difficult. He modelled a halakhah that saw all Orthodoxy and all Jewry as its natural constituency, and he built institutions that reflected and enacted that vision. The one conversation I was privileged to have with him remains a source of confidence in the integrity and beauty of halakhah. Chaval al d'avdin, v'yehi zikhro barukh.

I'm very excited to learn from Rabbi Dov Karoll's memorial FB post that Rabbi Schwartz's responsa are being prepared for publication; I have been waiting anxiously for years to read them. For now - in 1959 a young Rabbi Schwartz published a 92 page collection of *chiddushim* called **דברי רגש** (<https://www.hebrewbooks.org/40820>). His introduction notes that such collections were rare in America, and so publishing might be thought arrogant. He justifies himself by arguing that American Orthodoxy was in retreat precisely because its young synagogue rabbis did not see intense torah study – *ייגון* – as critical to their profession. His book was intended as an inspiration – if I can do this, so can you, and so should you! so that he might be the twig that kindled the log. It took some time, but recent years since have seen an intellectually transformed Orthodox synagogue rabbinate. *L'ilui nishmato*, I offer a brief halakhic conversation about funeral hearses beginning from one of his *chiddushim* (p. 44).

Talmud Moed Kattan 25a-b:

*When Rabbah bar Rav Huna and Rav Hamnuna died, they brought their bodies up there (from Babylonia to Israel). When they reached a bridge (too narrow to traverse side by side), the*

*camels (that were carrying the bodies) stood in place. The caravan driver said to them: What is happening? They replied: The (deceased) rabbis are showing each other honor (by refusing to go first).*

Rabbi Schwartz comments:

*See Responsa Pekudat Elazar #129, by the gaon the Av Beit Din of Ungvar, who strongly challenged the new custom he saw of transporting the body on a wagon set aside for that purpose. He cited the words of Ibn Shu'ib on Parshat Vayechi in the name of Ramban that one must carry the dead specifically on shoulders, as the verse says "and (Yaakov's) sons carried him" – not via animals. See (Pekudat Elazar's) extended discussion. But from the Talmud here, it seems the reverse, that the dead were taken via camels. See Rashi who comments "the camels who were carrying the litter stood in place."*

*Afterward I found the Sefer Kol Bo al Aveilut cites this gemara and explainS that where it is impossible otherwise, we carry them on animals, and carrying them from Babylonia to Israel was impossible.*

*But in my humble opinion, this is not correct, as Ramban according to Ibn Shu'ib says that Yaakov's sons carried him from Egypt to Israel, and how can we distinguish and estimate that from Babylonia to Israel is impossible, while from Egypt to Israel is possible, when they are both a several days' walk?!*

*On the contrary, it seems to me that this passage creates a difficulty for Ibn Shu'ib, and in general there is room to object to (Ibn Shu'ib's) ruling, that is built on a derashah that is not found in Chazal, so that since there is an explicit gemara saying the opposite, we can push his words aside. The matter requires investigation. (See Yad Malakhi Principle # 144.)*

Yad Malakhi Principle #144 opens by quoting Maharik 139 as saying "Derashot we must not make by ourselves," and then cites many other sources to the same effect. (Nonetheless, acharonim such as Netziv

seem to derive halakhah from original Torah interpretations, although one could argue that he saw his interpretations as peshat rather than derashah; the legitimacy of deriving halakhah from peshat is a different conversation.) Ibn Shu'ib's comment seems even less well-grounded because it is derived from a pre-Sinai narrative rather than from a legal text (although see Noda B'Yehudah 2:YD 161 that one can derive presumptive Jewish custom in this way).

One might argue that either practice or law was changed at Sinai. However, Ibn Shu'ib citing Ramban also bases his argument on Divrei Hayamim 2:25:27-28, in which we are told that "from the time that Amatzyah strayed from following Hashem, there was a rebellion against him in Yerushalayim, so he fled to Lakhish; but they sent after him to Lakhish, and killed him there, and they carried him on the horses and buried him with his ancestors in Ir Yehudah." The conclusion drawn is that Amatzyah was punished for straying from Hashem by having his corpse conveyed on horseback, which was undignified. (However, 2Kings 14:19-20 tells the same story without mentioning that Amatzyah strayed, and one might in context suggest that the use of horses - Radak suggests that the litter was actually carried between two horses - was *davka* a gesture of respect intended by the rebels to show that they remained loyal to the Davidic monarchy, and had rebelled against the dead king only because of his policies.)

Interestingly, I do not read Pekudat Elazar as strongly opposing the innovation of the hearse. In any case, he assumes that in the case of his questioner there is no practical alternative. He does strongly oppose **decorating** the hearse on the grounds that this contradicts the spirit of mourning and is not in the spirit of Jewish practice, and he is insistent that the hearse be set aside for the exclusive use of the chevra Kadisha. The rather astounding final paragraph of his responsum actually doubles down: since wagons are new, there can be no established customs regarding their use, and so new ideas are welcome.

*Regarding Your Honor's question as to what is to be done –*

*I have heard that the chevra has the practice of writing various Biblical verses on the wagon, but I know no basis for this, and it can't be categorized as a custom, since carrying the dead out in a wagon is itself something new, and as I wrote in the name of*

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*Ramban that it is a punishment. Nonetheless, in my humble opinion it seems that a rationale for this is to alert those passing by in the streets that a corpse is being taken out so that they can fulfill the mitzvah of accompanying the dead. Therefore, in my opinion, one should write on all four sides of the wagon in large letters. On the first side, one should write "(Know) whence you came and to where you are going"; on the second side, "You are blessed when you come, and blessed when you go"; on the third side, "At the end of the matter, when everything has been heard (fear G-d, because this is the entirety of being human)"; and on the fourth side "Because He will order His angels to accompany you, and raiding and destruction will not be heard within your boundaries, and there will be no breach etc." May we merit bearing the voice spreading good tidings and announcing redemption.*

By contrast, R. Shlomo Kluger (שו"ת טוב טעם ודעת) **מהדורא ג ב:רלה** in the Cracow 5660 edition) fought successfully against the introduction of wagons/hearses almost at the price of his own life. The amazing story is told by his grandson in **Toldot Shlomoh**, who asserts that Rabbi Kluger received unanimous written support from the rabbis of Galicia even as the *machloket* led to violence within the town and government intervention on the side of his opponents. (Note that Rabbi Kluger was fighting against wagons decorated with designs and flowers, that were deliberately and consciously introduced as reforms.)

Orthodox leadership requires knowing when change is needed, when it must be fought, and when it has already happened and demands a response, which means that it also presents an opportunity. Our task is much harder without Rabbi Schwartz's direct guidance. I hope his Torah will continue to light our ways.

Shabbat shalom