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Reform *Halakhah* in the Wake of *Halakhah Shefuyah* (“A Sane *Halakhah*”)
by Rabbi Moshe Zemer*

Conclusion: Rabbi Zemer’s Halakhic Method/Rulings (P’sikah) versus Orthodox P’sikah

The question must be asked, as we conclude this essay: what is the difference between the method of Reform *halakhah*, as Rabbi Zemer practices it, and the Orthodox method? Why has Rabbi Zemer’s halakhic writing been totally ignored by the Orthodox community? These questions have much to do with the nature of Orthodox halakhic discourse, but clarifying them will contribute greatly toward understanding the place of Rabbi Zemer’s halakhic activity within the boundaries of the discipline called *halakhah*.

The first explanation that comes to mind is linked to the substance of the rulings themselves. Unlike Orthodox halakhic authorities (*poskim*), Rabbi Zemer permits the marriage of a *kohen* and a divorcee, exempts a widow from the requirements of *ḥalitzah*, is quite lenient with respect to the laws of conversion, and so forth. According to this explanation, certain conclusions that Rabbi Zemer reaches do not fit within the boundaries of Orthodox *p’sikah*. But this explanation is problematic, for as I have stated there is no conceptual, *a priori* definition that determines the boundaries of the *halakhah* according to the substance of rabbinical rulings. Orthodox *poskim* are in dispute over many serious halakhic matters, yet they remain included within the same halakhic discourse. We can mention, for example, the dispute over abortion between Rabbi Moshe Feinstein and Rabbi Eliezer Yehudah Waldenberg: Rabbi Feinstein rules that abortion is forbidden and is akin to murder, while Rabbi Waldenberg permits abortions in certain cases and tends to think that the prohibition is merely a Rabbinic one. Why is a ruling permitting abortions included within the boundaries of the *halakhah* for Orthodox Jews while a ruling permitting the marriage of a *kohen* and a divorcee falls outside those boundaries?

A second explanation holds that the fundamental difference between Rabbi Zemer and Orthodox *poskim* is rooted not in their substantive conclusions but in how they pursue halakhic discourse and the way they argue for their rulings. One who asserts that the prohibition of marriage between a *kohen* and a divorcee is primitive and unethical ejects him/herself from the boundaries of halakhic discourse. It’s true that the dynamism of the *halakhah* does not require that one condemn the ancients, who occupy a central place in the eyes of the imagined halakhic community. However, this explanation, too, is insufficient, since most of Rabbi Zemer’s argumentation on behalf of his innovative rulings does not involve critique of the halakhic system but is based rather in textual interpretation that could be accepted within the field of traditional Orthodox *halakhah*.

It would seem, then, that we must seek an institutional/social explanation. The boundaries of the *halakhah* are determined not only by the substance of the rulings or by the methods of their discourse and argumentation, but also by the institutional and communal attachments of the *posek*. The *halakhah* is determined by the scholars of the halakhic community. But there have been situations throughout history in which several halakhic communities existed simultaneously

and competed with each other. That situation prevails today: different halakhic communities – Orthodox, Conservative, and Reform – function side by side. A *posek*'s stature is determined principally by his attachment to one of these communities. Attachment to a halakhic community is determined both by the members of that community, who define the paradigm of proper halakhic discourse, and by the individual, who wishes either to be included within that community or to stand outside of it.

Rabbi Zemer is obviously not a member of the Orthodox halakhic community. He opposes it and vigorously attacks it on both moral and social grounds. Throughout his book he criticizes the Orthodox rabbinical establishment and sets himself apart from it. Rabbi Zemer has sought to establish a different halakhic community – a “sane” one, as he defines it - alongside the Orthodox one. But his vision has not been realized; a “sane” halakhic community has not arisen. The fault for this lies not in any lack of effort by Rabbi Zemer but in the distressing fact that few non-Orthodox Jews have taken interest in the new halakhic alternative that he has developed.

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