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# 6

## The Decline and Fall of Local Rabbinic Authority

*Gil Student*

The issue of rabbinic authority in the Modern Orthodox community is not a matter of how wide a rabbi's authority spreads—whether his opinion is decisive on issues of aesthetics, politics, and so forth, or just on ritual.<sup>1</sup> Those were the subject of discussions held at previous Orthodox Forums and generally contrasted our (centrist) limited views with the more expansive conceptions on the religious right.<sup>2</sup> Today's debate is whether rabbis have any authority at all. A rabbi who has shown himself to be wise will be consulted on issues ranging from the religious to the personal. His advice will be taken seriously because of his insight—but is it binding? When the issue is not halakhic, it is assumed in our community that his advice is nothing more than helpful suggestions. The question before us deals with halakhic issues. In the following three sections, I argue that there is a need for a personal halakhic decisor, that this guide should be your synagogue rabbi, and that today people often do not turn to their synagogue rabbi

for halakhic guidance due to a variety of reasons. I then offer practical suggestions for changing the situation by establishing a partnership among rabbis, communal leaders, and *roshei yeshivah*.<sup>3</sup>

## THE NEED FOR AUTHORITY

### *Asking a Question*

The idea of asking a personal *she'eilah* on halakhic matters seems to be rooted in an explicit biblical passage:

If there arise a matter too hard for you in judgment, between blood and blood, between plea and plea, and between stroke and stroke, even matters of controversy within your gates; then you shall arise, and go up to the place which the Lord your God shall choose. And you shall come to the priests the Levites, and to the judge that shall be in those days; and you shall inquire; and they shall declare to you the sentence of judgment. And you shall do according to the tenor of the sentence, which they shall declare to you from that place which the Lord shall choose; and you shall observe to do according to all that they shall teach you (Deut. 17:8–10).

The context of this passage<sup>4</sup> and the initial words *ki yippalei*<sup>5</sup> led the Sages to see this passage as obligating religious judges to take their unresolved questions to a higher authority.<sup>6</sup> Despite the sensible *kal va-ḥomer*, I have not found any midrash or commentary that derives from this verse an obligation on a layman to present his halakhic difficulties to a religious authority. The reason for this, I believe, is that this need is so fundamental and obvious that it requires no compulsion. Of course, anyone interested in following the word of God who is unsure of the proper route will ask an expert for clarification of the law. We will otherwise be paralyzed by uncertainty or forced into stringency.

One of the many duties of the pulpit rabbi is to serve as the needed halakhic expert. This is, however, an understatement of his role. Rulings on Jewish law are not merely clarification or the offering

of an opinion. *Pesak*, a personalized halakhic decision (*pesikah* in modern Hebrew), is binding. This can be seen most clearly in the rule of *hakham she-asar ein hakham aher rashai le-hattiro*, “when one authority prohibits, another may not permit.”<sup>7</sup> The standard approach to this issue is that the classical authorities debate why this is the case—whether it is because the inquirer accepts on himself to follow the authority’s ruling in an implicit prohibitive vow or because the respect due the first rabbi prevents annulling his ruling.<sup>8</sup> I believe that there is also a third approach among commentators, perhaps the majority, which asserts that a rabbi’s ruling creates a metaphysical status; it establishes a halakhic reality for this object<sup>9</sup> that had heretofore been uncertain.<sup>10</sup> When there is halakhic uncertainty, a rabbi is needed to render a decision and determine the law, not just teach it.

Similarly, while a *minhag* is binding because it has the status of a vow, the *Peri Hadash* asserts that this only applies to an extra-halakhic practice, one that is beyond biblical and rabbinic obligations. Following a specific ruling on a purely halakhic matter is not a *minhag* but the nature of halakhah.<sup>11</sup> In other words, when a rabbi rules for a questioner on a halakhic matter, his ruling shapes the questioner’s Torah obligation, creating a new halakhic reality for him.<sup>12</sup> Such is the power of the halakhic decisor.

### ***The Art of Halakhah***

I have heard talk about the proposed creation of a halakhic database with an artificial intelligence interface that will provide halakhic guidance. This is impossible for two reasons: (1) the vast complexities involved in creating a comprehensive database render the enterprise impractical, (2) it represents a misunderstanding of the nature of halakhic guidance. Initiates in many professions recognize that while their field projects an image of mathematical precision, it is in reality highly subjective and personal. Actuarial science is the field where I have seen this in practice, as well as the quantitative finance that facilitated the economic downturn from which we are currently suffering. The complex formulas and models seem purely objective, but in reality they operate with a great deal of subjectivity.

Similarly, *le-havdil*, halakhic decision-making is an art and not a science.<sup>13</sup> Authorities throughout the ages have adopted multiple approaches to innumerable issues, and contemporary decisors have different methods of reaching a *pesak*. Some rabbis choose, whenever possible, the side of a debate they find most convincing based on an examination of the primary sources. Others take into account the multiple existing views among later authorities and reach decisions based on rules, such as allowing for leniency in rabbinic matters and requiring stringency in biblical matters. The majority of rabbis, it seems to me, stake positions somewhere along the spectrum between these two poles.

There is also an element of *hiddush*. Sometimes a rabbi will have an innovative approach to a subject that he will incorporate into his ruling. Others will rely only on precedent. But even precedent allows wide room for disagreement, because how you weigh prior authorities, whom you consider to be of prime importance and whom lesser, will certainly impact your conclusion.

Besides these methodological issues, a factual analysis is also required. You need to tease out of the questioner all of the necessary details to gain a full understanding of the question. This is no small feat, and people differ on how they do this and therefore what constitutes the full question to which the rabbi will then respond. No computer can do this.

### ***Specialists***

There was a time in history when the canons of knowledge were sufficiently limited that individuals could master all of them. Scholars such as Da Vinci and Galileo were capable of fully comprehending the breadth and depth of multiple disciplines, making important contributions that advanced different fields. This phenomenon of the Renaissance man is aptly a thing of the past. The current specialization of knowledge is a result of the extended study of hundreds of thousands of scholars in thousands of fields over hundreds of years. It is, in itself, a full-time job to keep abreast of developments in any given subject. The unique genius of the Renaissance man that once allowed a savant

to master all knowledge is now sufficient to master, at most, two or three fields.

*Le-havdil*, Jewish studies developed at a slight lag. The era of the “Renaissance Yid” was the late eighteenth and early nineteenth centuries, when a Maharatz Chajes could master all rabbinic literature and simultaneously keep abreast of developments in all of the various areas within the academic study of Judaism.<sup>14</sup> With the advent of inexpensive printing, widespread advanced yeshivah studies, and the maturation of academic Jewish studies, this is no longer possible. The proverbial *Ish ha-Eshkolot* is a relic.<sup>15</sup>

Halakhah, the application of Jewish law to the nuanced realities of daily life, is no less a specialty. We cannot realistically expect every Jew to be a master of practical halakhah, and would be misguided to advise amateurs to reach their own conclusions when experts are readily available. Yet this type of anti-intellectualism, of “common sense” rule over studied decision, is a frequent occurrence. Many people think that after examining the relevant texts—often for the first time—they have gained sufficient insight into the subject to critique established authorities and offer their own opinions.<sup>16</sup>

### ***Non-Specialists***

There is a bit of a contradiction, or at least an inconsistency on first glance, in R. Abraham Besdin’s book *Reflections of the Rav*.<sup>17</sup> In chapter 6, R. Besdin quotes R. Joseph B. Soloveitchik as defending the religious intuition of the average Jew. Jewish values and traditions are so ingrained in the Jewish psyche that they infiltrate the subconscious thought of the community. Yet in chapter 13, R. Besdin quotes R. Soloveitchik as insisting that authentic Judaism must come from its authoritative representatives because the masses are misguided in their “common sense” approach. Are the masses subconsciously enlightened or not? Can their religious instincts be trusted or not?

I think the resolution to this question can be found in the repetition in *Avot* chapter 1 of the dictum “Make for yourself a teacher” (*Avot* 1:4, 16). According to Rashi, this is an example of two *tanna'im* teaching the same idea. Maimonides, however, sees two different concepts being advocated. The first is an instruction to find a mentor

who will teach you Torah. The second is a command to find a rabbinic authority who will rule for you on halakhic matters. The former is about a teacher of Torah theory, and the latter about an adjudicator of Torah practice.<sup>18</sup>

When it comes to Torah knowledge, it exists in abundance in the Jewish psyche. Torah attitudes inform the views and practices of traditional Jews. Jewish law, however, must be decided by an expert in its application who knows all of its sources and understands how different circumstances affect it. Torah study and teaching are universal activities, but Torah ruling is only for experts. This is aptly described in a recent biography of Nehama Leibowitz, who, despite her expertise as a Bible scholar, made no claim to halakhic authority and regularly consulted with and deferred to noted rabbis:

Nehama abided by the halachic rulings of her day, refraining from voting, in compliance with R. Kook's prohibition of women from doing so. She took her halachic questions to rabbis she admired—to her local rabbi, R. Yohanan Fried, or R. Shlomo Zalman Auerbach and R. Shlomo Min Hahar. She also asked halachic questions of R. Isaac Herzog. . . . In the final decades of her life she regularly phoned the late R. Yosef Kapah with her questions. He recalled that she knew Halachah very well, and frequently already knew the answer. Nehama was turning to him, not for information, but because it was important to her to rely on a recognized authority in her religious practice. Thus she was careful to ask about seemingly minor issues such as making tea on Shabbat, even calling again to double-check.<sup>19</sup>

It is worth noting that even advanced Talmud scholars may not be experts in practical halakhah. Stories abound about *roshei yeshivah* who have refused to rule on practical matters, leaving them for pulpit rabbis. These stories, though, speak mainly of the past. *Roshei yeshivah* today generally feel free to rule on practical matters, only sometimes due to experience and expertise. This can lead to numerous problems,

including overly technical answers that ignore important human factors and the application of stringencies that are appropriate only for the *beit midrash* and not for the community in general. In particular, there is always a disconnect between the experiences of a rabbi who has spent his whole life in a yeshivah environment and those of a layman who spends the majority of his waking hours in a secular business place. Without ever having been there, it is extremely difficult for a rabbi to understand the environment and its challenges. A *rosh yeshivah* is often at a disadvantage to a pulpit rabbi in this regard, because the latter has greater secondary exposure through the time spent talking to his congregants. That disconnect sometimes leads falsely confident *roshei yeshivah* to issue rulings on situations they do not fully understand. This is, of course, a broad generalization that has many exceptions.

Nevertheless, it is commonplace for yeshivah graduates to take their halakhic questions to their *rosh yeshivah* or another of their teachers rather than their synagogue rabbi. Indeed, I too have been guilty of this at times. Not only does this sometimes lead to an improper answer and also impede the development of a rabbi-congregant relationship, it undermines the authority of the local rabbi, to which we now turn our attention.

## THE LOSS OF AUTHORITY

### *The Outsiders*

Until now, we have discussed the need to ask your halakhic questions of a qualified authority. Let us now focus on the proper address for these questions and why it has declined in popularity.

Today's heightened level of communication is a mixed blessing.<sup>20</sup> It is now commonplace for laymen to know on any given subject the views of multiple local and international rabbis. The proximity of very different communities in large Jewish enclaves and the omnipresent summaries in books, articles, and websites of multiple views allow for an open marketplace of ideas. This is a godsend for creating large amounts of stimulating Torah content that attracts the attention of those who might otherwise lack a sustained interest in studying Torah. In theory, this also keeps rabbis informed.<sup>21</sup> But it also allows laymen to choose the opinion that suits their temperaments and needs.

The *humra* addicts are fed by Haredi newspapers, and the *kulla* seekers are satiated by renegade blogs. Many see no reason to ask their local rabbi.

Historically, the rabbi of a town was called its *mara de-atra*, “master of the place.” This title is reminiscent of the Gemara that all matters of the town are the rabbi’s responsibility (*Mo’ed Katan* 6a). Today, in the United States, most rabbis serve congregations and not towns. However, it seems to me that each rabbi’s religious authority still applies to his community, that is, to those families that voluntarily join a rabbi’s synagogue.<sup>22</sup> Even though families choose their synagogues based on a number of criteria,<sup>23</sup> the very act of settling within a rabbi’s domain is, I suggest, a submission to his halakhic authority. I see no difference between choosing a contemporary synagogue for the quality of its *kiddush* and moving into a premodern town for business reasons. The latter certainly obligated a Jew to follow the city rabbi’s halakhic decisions, and so, I contend, does the former.<sup>24</sup>

The Rema writes that a rabbi is not allowed to rule on ritual matters within the domain of another rabbi (*Shulhan Arukh, Yoreh De’ah* 245:22). The Gra (ad loc., no. 36) points to talmudic examples of rabbis refusing to issue a ruling while in another rabbi’s town (e.g., *Hullin* 53b). In contemporary application, a rabbi is the sole halakhic authority for members of his synagogue, and no other rabbi has the right to rule on halakhic matters for them. When an outside rabbi of any stature rules on a local matter, he infringes on the local rabbi’s jurisdiction, an infraction so serious that it is punishable with excommunication.<sup>25</sup> This stringency, I suggest, is well deserved, because divergent rulings on many issues can and do lead to disuniform practice and often communal *mahloket*.<sup>26</sup>

This is one of the reasons why my standard answer to people who e-mail me halakhic questions is that they should ask their rabbi. I find it difficult to understand the halakhic legitimacy of “Ask the Rabbi” features in newspapers and on websites, or, additionally, the *Kol Korei* type of halakhic pronouncements, unless they are attempts to fill the holes left by rabbis (and society)—answering questions that will never be asked of a rabbi—rather than to create local disconnects.



In 2005, in response to a pamphlet that advocated a recently built *eruv* in Flatbush (in addition to the prior *eruv* that had existed for over twenty years), a mailing was sent widely within the Flatbush community condemning any *eruv* in Flatbush. The denunciations were strictly by prominent local *roshei yeshivah* and synagogue rabbis, with a separate section containing letters from Israeli rabbis.<sup>27</sup> While it is significant that the statement was from local rabbis, it is unclear what right they had to impose their position on members of other local synagogues and communities who did not normally turn to them for guidance. I was particularly struck by the response of one blogger, who created a mock mailing that read simply: “The Flatbush Eruv: Ask Your Rabbi.”<sup>28</sup> This was a sharp critique of what can be viewed as an infringement on the prerogatives of many pulpit rabbis by the issuer of the Flatbush mailing.

### ***Distance***

There are other reasons that some people do not address their halakhic questions to their local rabbi. Whether due to embarrassment over lack of knowledge, shyness about discussing private details with an outsider, intimidation by someone so different, or personality clashes, some people are simply uncomfortable asking their rabbi questions. Some may ask rabbis who taught them in school, others may venture to websites where they can ask questions anonymously, while still others may choose not to ask and to instead act as they see fit.

There is also a general distrust of authority. A desire for independence is part of human nature, but for at least the past few decades, a profound skepticism of authority figures has dominated Western culture. Rabbis are certainly not exempt from being targets of this attitude. This is further aggravated when great rabbis are perceived, rightly or not, as ruling on matters they do not fully understand or being manipulated to rule based on incomplete or incorrect information. This leads to a dismissal of all rabbinic authority. This is certainly aggravated by the all-too-frequent news story about rabbis involved in financial and sexual scandals. The reality is that when one rabbi sins, all rabbis look bad.

Some people ignore great rabbis, while others bypass their local rabbi and go directly to a leading authority—whether a *rosh yeshivah* or the rabbi of a different community. An important reason for this attitude is the vast gap in expertise that often separates rabbis. Many competent rabbis lack the training, knowledge, and experience of their colleagues, particularly after years of communal service that have limited their available time for personal study. Laypeople want the most expert halakhic opinions, just as they want the most expert medical and financial opinions.<sup>29</sup>

Sometimes a rabbi undercuts his own authority by accepting a position in a synagogue with a significantly different worldview than his own, whether to the right or the left, and then tries to “convert” his congregants. This common phenomenon creates an alienation that is unnecessary and counterproductive. A rabbi needs to work with his congregants and generate goodwill so they will have confidence in his views.<sup>30</sup> Part of this is to allow hashkafic pluralism, to recognize that his congregants have different backgrounds, worldviews, and temperaments, and to either answer questions appropriately or to direct questioners to someone who can.<sup>31</sup> For example, if someone Modern Orthodox were to ask his Haredi rabbi about college choices, the rabbi must either answer taking into account the questioner’s worldview that values secular education or direct the questioner to a different rabbi who is able to advise within this framework. This takes a high level of sensitivity and humility that is difficult to achieve.

### ***Lowering the Barrier***

An additional diminution of rabbinic authority can be found in the recent debate regarding the ordination of women.<sup>32</sup> Proponents advance two main strategies to avoid the prohibition of *serarah* that entails when women attain positions of communal authority. One is to adopt the minority view that the prohibition of *serarah* does not apply to women. The difficulty with this is that it leaves ample room for those who oppose the ordination of women to adopt the majority view that accepts *serarah* limitations on women.<sup>33</sup> Therefore, another approach is strategically more advantageous—namely, arguing that a rabbi has

no authority over the community. While a coherent argument to this effect can be constructed, the embracing of the decline of the local rabbinate is, I believe, to the detriment of the entire community.

A friend described the following incident: At a synagogue event, a man went to wash his hands before eating bread. Not finding the regular washing cup, he took a different vessel to use but was unsure of its halakhic suitability. He asked a local educator who was standing nearby, and this rabbi told him that according to one opinion it was good and according to another it was not. My friend, another local educator, witnessed the paralysis this response caused and stepped in, telling the man that the vessel was acceptable and he should proceed. My friend told me this to describe how some teachers of halakhah fail to instruct people what to do. My reaction, though, was that my friend had no right to issue a ruling for this man, given the other available options.<sup>34</sup> Who is he to decide on a halakhic matter of legitimate dispute among major *posekim*? The dilemma he witnessed should have been solved by a rabbi with local authority, with the mandate to render a decision that was conclusive for members of his community.<sup>35</sup> If the rabbi has no authority, his rulings, teachings, and exhortations become nothing but friendly advice, another voice among the many that crowd our lives in this hyper-connected day.

There is also a widespread lack of appreciation of the importance of meta-halakhic, values-based aspects of halakhah that require expertise in application. One can speculate as to whether the origin of this attitude is a growing textualism and/or a desire for scientific precision. Regardless, axiological principles that have guided halakhic authorities for centuries are regularly dismissed by laypeople in their desire to self-*pasken*.<sup>36</sup>

### ***Independent Minyanim***

A few examples of the diminished respect for rabbinic authority are in order. One phenomenon that has recently been covered extensively in the media is the independent *minyan*. This “new” concept of a group convening for prayer without a formal synagogue structure is hailed by some as the future of Judaism.<sup>37</sup> The novelty of this phenomenon is debatable. It is actually the third wave or generation of the *Havurah*

movement, following its innovation in the 1960s with the original three *havurot* in Boston, New York, and Washington; and a second wave in the 1970s beginning in New York and Los Angeles. The second generation was a counter-move to the earlier *havurot* in that it represented a measure of return to more traditional synagogal forms while maintaining egalitarianism and innovation. The third generation is more formalized and is represented by “congregations of renewal” rather than informal prayer gatherings, among other differences.<sup>38</sup> Allow me to offer a few thoughts based on my childhood experience attending a *havurah* in the early 1980s.<sup>39</sup>

This *havurah* was a gathering of families every Shabbat morning for egalitarian prayer in the basement of a Reform temple. The participants were local families of varying levels of observance and Jewish education. A core group of knowledgeable, observant people, including one JTS ordainee, led the group, said *divrei Torah* in lieu of sermons, and taught synagogue skills to those interested in learning. The friendships made in this group remain strong over twenty years later. After a few years of regular attendance, my family drifted back to our synagogue but continues to remain within that group of friends.

After polling many of the regulars at my recent elementary school reunion, I see a few factors that attracted people to this *havurah*: (1) the informality of structure and attire made it a welcoming environment, (2) the lively, participatory services, (3) the democratic nature—while in reality almost all decisions were made by the core group, everyone’s input was encouraged and taken seriously, (4) the completely egalitarian service was, at that time, fairly radical and not widely available in Conservative synagogues, (5) perhaps most important, it provided a fun Jewish experience for the children, who had wide leeway to run around and play.

After interviewing a few people involved in congregations of renewal, the independent *minyanim* at the border of Orthodoxy,<sup>40</sup> I found significant similarities and differences.<sup>41</sup> The atmosphere is welcoming and informal, and the services are lively. The attendees have a wide variety of backgrounds and levels of observance. Decisions are fairly democratic, although some form of halakhic authority is regularly consulted and often given veto power. Perhaps the biggest difference

is demographic—the attendees of independent *minyanim* are young, abundantly single and/or without children, and living in a city. While on the one hand, this prevents family needs—such as preparation for a synagogue bar mitzvah—from interfering with attendance and allows for continuous replenishment of the ranks as long as young people continue to move into the neighborhood, it also leads to a constant exodus as members move on to another stage of life.

In general, it seems to me that the Ḥavurah movement had more potential staying power than the independent *minyanim*, yet largely failed to become a permanent fixture, despite the influence it exerted on the broader Jewish community. I expect independent *minyanim* to be an equally transient phenomenon, whose influence has yet to be fully seen. As high schools and colleges know well, the constantly changing student body makes trends short-lived, as new students arrive with different needs and interests than those who preceded them. The same can be said about the predominantly transient members of independent *minyanim*.

One important commonality is that of ritual experimentation. The *havurot* were free of rabbinic oversight and were therefore able to democratically choose full egalitarianism. The independent *minyanim* have a little more fealty to the halakhic process but are still the places where egalitarian experimentation is taking place, each *minyan* based on the boundaries its members decide. If a religious guide chooses to stop this democratic process, he or she runs the risk of members starting a new independent *minyan* where they have more freedom from unwanted authority (and this has happened).

Like everything, the ḥavurah and independent *minyan* phenomena have both positive and negative aspects. The positive aspects speak volumes about the state of American Jewry and its needs, information that synagogues ignore at their own peril. Some of the negative aspects include the democratization of halakhic decision-making, the bypassing of local and communal authorities, and the general atmosphere of halakhic experimentation.<sup>42</sup>

### **Bans**

Another example that is close to my heart is that of book-banning. I first learned of the impending ban on three of R. Natan Slifkin's books on the day it was issued—September 21, 2004, a few days before Yom Kippur. Despite my expectation that the controversy would quickly die down, a few months later the bans were further publicized in *Yated Ne'eman*. The ban led R. Slifkin's publisher and distributor to drop his books, after which he asked me to distribute his controversial works through Yashar Books, a company I had recently started. My inclination was to accept, but I first consulted with a number of synagogue rabbis, asking whether they wanted the books available for their communities. They responded positively, and I took on the distribution of the controversial books. I have subsequently obtained approval and encouragement from many other rabbis and *roshei yeshivah*.

This episode highlights another area in which the authority of synagogue rabbis is undermined. When leading Torah scholars issue wide-reaching rulings that are highly publicized, synagogue rabbis feel their hands forced. If these local authorities disagree or think that their communities reflect different circumstances that necessitate alternative conclusions, they will need to take the uncomfortable position of publicly disagreeing with giants of Torah. Not every rabbi has the courage and the political capital to do so. In effect, many rabbis have had the halakhic authority over local matters snatched away from them by the assistants and publicists of leading Torah scholars.<sup>43</sup>

All of these many factors we have discussed contribute to the situation we have today where even sincere people striving to fulfill the *reẓon Hashem* choose not to abide by the halakhic decisions of their rabbis.

## **REGAINING AUTHORITY**

### ***Deference***

Many of these problems are, one way or another, caused by rabbis, and the resolutions will also be through their efforts. The solution will not be synagogue rabbis preaching about their own prerogative to

determine local halakhah. Only the most forgiving audience will fail to note how self-serving that sounds. The answer, I believe, rests in a partnership among rabbis and communal leaders, each emphasizing the authority of a local rabbi and the local rabbis recognizing the need to consult with more expert authorities on complex cases.

*Roshei yeshivah* need to send their students to local rabbis as appropriate. Of course, I am not suggesting that the yeshivah is not a place for teaching practical halakhah by answering questions. However, there are questions, and there are questions. When a student wants to know whether his torn *zitzit* have been invalidated, that is certainly an appropriate question for a *rosh yeshivah*. But when he wants to know whether he should attend his cousin's intermarriage, it is entirely appropriate for a *rosh yeshivah* to send a student to his local rabbi (and maybe even call the rabbi directly as well). The *rosh yeshivah* can also send a married *kollel* student to his local rabbi for household questions, such as those relating to *kashrut* and *taharat ha-mishpaha*.

In lectures, also, *roshei yeshivah* and communal leaders can speak about the importance of respecting the domain of the local rabbi. People often do not consider that they should submit to the halakhic authority of their *mara de-atra*. They need to be reminded—by someone other than their rabbi—of this obligation.

Stories about great scholars deferring to proper authorities need to be emphasized. It is told that a Vilna layman once inadvertently asked both the city rabbi and the Vilna Gaon about the *kashrut* of a chicken. The former permitted it and the latter forbade. In order to emphasize his authority as the city's official halakhic authority, the city rabbi insisted that the Vilna Gaon join him in tasting this cooked chicken—to which the Gaon assented (the story continues that a piece of forbidden fat fell onto the chicken as a divine commutation of the Gaon's sentence).<sup>44</sup>

*Roshei yeshivah* who are expert halakhists certainly have a role in local halakhah, but as consultants for local rabbis. Pulpit rabbis should serve as the gatekeeper to prominent authorities. When people ask their rabbi a question, they know that he will take a difficult case to a world-class expert. This allows for the development of rabbi-congregant relationships and maintains the local rabbi as the sole

source of halakhic rulings, even for those pulpit rabbis who are not themselves renowned experts.<sup>45</sup> This also enables maintaining the rabbi-congregant relationship while still allowing for the conscientious objector, the congregant who belongs to a different ideological community than his rabbi and feels a need to obtain guidance in certain issues from those who share his ideology.<sup>46</sup> The pulpit rabbi should serve as the gatekeeper for such questions or, at the very least, be informed about the discussion. A rabbi unaware of, and uninvolved with, his congregants' hashkafic and halakhic dilemmas is significantly impeded in his communal work.

### ***Guard Your Tongue***

But the burden of restoring local authority should not be placed solely on the shoulders of *roshei yeshivah*. We all need to be careful in our speaking patterns to preserve the dignity and prerogatives of the synagogue rabbi. One of the many humorous aspects of the Jewish community is the frequent call for care in speech. While preaching greater *shemirat ha-lashon* is certainly praiseworthy, the way some rabbis can lecture about its importance while still insulting other people, sometimes in the very same speech, seems straight out of a stand-up comedy routine. At an Agudath Israel convention a few years ago, there was a session about blogs in which some speakers denounced bloggers who insult *Gedolei Yisrael*. Afterwards, I went up to one of the speakers and pointed out that when *roshei yeshivah* insult rabbis in the most public of ways, how can they be surprised when the public learns from them and insults rabbis as well? Insults are a weapon that can be easily turned around.

One of the standard messages relayed to an adult struggling with the consuming needs of an elderly parent is that his children are watching. They will emulate his treatment of his parents. Aside from the impetuses of gratitude and fulfilling a biblical commandment, an adult should treat his own parents well if he wants his children to treat him well. Of course, there are no guarantees in life. I suspect, though, that this powerful idea is true more often than not.<sup>47</sup>

Similarly, a rabbi who wants respect from his followers needs to show respect to other rabbis. When a rabbi displays public respect



for the domain of another rabbi, he will be respected himself. When all rabbis respect each other's prerogative to serve as a *mara de-atra*, congregants will observe and learn. We need to free ourselves from the sadly common habit of delegitimizing the rulings of other rabbis and instead learn the language of *eilu va-eilu*.

### ***The Incompetent Rabbi***

When all is said and done, however, a synagogue rabbi needs to know his own limits. Not everyone who manages to pass a *semikhah* examination is truly fit to rule on Jewish law. A rabbi can have many wonderful skills that make him an asset to his community but still be unqualified for all but the simplest halakhic questions. The Mishnah has harsh words about such a person who despite his shortcoming still rules on halakhic matters, calling him a "wicked, arrogant fool" (*Avot* 4:7).<sup>48</sup> He needs the self-awareness to recognize the issue and consult with those more qualified in this aspect of the rabbinate. All of the advocacy for the prerogatives of the synagogue rabbi will be dismissed if the problem of the overstepping rabbi is not resolved. While R. Menashe Klein writes that he was told by R. Moshe Feinstein that he is obligated to disagree with the older authority whom he thought was wrong,<sup>49</sup> at the time R. Klein already had *Shas* and *Posekim* at his fingertips. This certainly does not apply to someone of dramatically lesser learning. Even if the precise definition of someone entitled to an opinion is unclear, this does not mean that we can entirely disregard the vague definition. If local rabbis do not *psaken* responsibly, they cannot expect the cooperation of *roshei yeshivah* and other rabbis.

Regarding such rabbis who do not defer to greater authorities when appropriate, I found a noteworthy paradigm of balancing the prerogatives of a *mara de-atra* with potential incompetence in R. Eliezer Melamed's *Revivim: Kovez Ma'amarim be-Inyanei Am, Erez, Zava*.<sup>50</sup> Asked whether an Israeli soldier is bound by the halakhic decisions of an army rabbi or should instead consult with his *rosh yeshivah* or hometown rabbi, R. Melamed answered as follows: There are many excellent army rabbis, but some are unqualified and/or too deferential to military superiors. Therefore, a soldier should follow the ruling of the army rabbi, who is the *mara de-atra*, unless his decision does not

“make sense,” in which case the soldier should ask an outside rabbi.

R. Aḥiah Amitai wrote a letter disagreeing, pointing out that the determination of whether a ruling “makes sense” is so subjective that it effectively dismisses the authority of the army rabbinate for anyone who prefers to look elsewhere for guidance. Additionally, outside rabbis frequently do not understand the immediate circumstances and often are educators without training in practical halakhah. This approach will also lead to religious disunity within units consisting of soldiers from different towns or *yeshivot*. And officers will ignore army rabbis when they see that even religious soldiers do not follow their instructions.

R. Melamed’s response was, essentially, that despite all these problems, this is the way it has to be. I believe that his approach can be reformulated as follows: When a soldier receives a ruling that does not make sense to him, he should ask an outside rabbi whether the ruling falls under the category of a mistaken and reversible decision as defined in the *Shulḥan Arukh* (*Yoreh De’ah* 242:31) and commentaries (admittedly a complex discussion). If it does, then the outside rabbi, who must make every effort to determine and fully understand the exact circumstances, can give a ruling to the contrary. Otherwise, the soldier must follow the army rabbi’s ruling even if his outside rabbi reaches a different conclusion. As long as the army rabbi’s ruling is not so mistaken as to be reversible, it is binding because he is the *mara de-atra*.

The same approach can be applied to synagogue members. An outside rabbi who is consulted, and is concerned about the competence of his questioner’s local rabbi, should only provide an alternative ruling if the first rabbi’s decision is reversible. Otherwise, he should advise people to follow their local rabbi’s decision even if he disagrees with it.

### ***Global Halakhah***

When it comes to issues that affect broad segments of the community—beyond a single synagogue, neighborhood, or town—broader halakhic shoulders are required. This is both because such issues are more complex and require balancing numerous halakhic and public policy concerns at once, and also because the decisor must be capable

of commanding the respect and deference of rabbis throughout the multiple communities. In short, he must be recognized as an outstanding halakhic expert with a deep understanding of general and local socioreligious dynamics.

Beyond the problem of the overstepping rabbi, which we have already discussed, a dilemma arises when the few rabbis who have achieved sufficient prominence disagree on a particular subject, as is inevitable. The halakhic system allows for such pluralism. Some people, however, mistake pluralism for chaos. They believe that allowing for multiple opinions means allowing for all opinions, that unless there is a single authority there is no authority. Local rabbis need to have their own outstanding authority, who shares the local communities' values, with whom they consult on global matters. Even then, laypeople often find it difficult to accept one position when there is widespread debate, particularly when they fail to understand the reasoning behind a specific view.

### ***Show Your Work***

The solution, albeit only partial, to this problem is greater transparency. There is a need for halakhic authorities or their disciples to proactively justify and defend their rulings in publicly accessible forums, perhaps by writing and publicizing lengthy responsa. The processes by which information is gathered and a decision is reached need to be disclosed. While criticism will be fierce and immediate, there are ample mechanisms available for responding to those critiques and, when appropriate, revising decisions based on valid criticisms.

A few years ago, someone posted a popular essay on a halakhic topic by R. Shlomo Aviner to an e-mail list on which I participated. I proceeded to critique his approach in detail, and the person who posted the original essay brought my critique to R. Aviner, who then responded to each point. While I was not entirely convinced by his response, I gained respect for his position and his intellectual openness. A few years later, I responded to a surprising position of R. Aviner's that a colleague of his e-mailed with a request for sources. I was pleasantly surprised by an e-mail with a list of responsa that supported his position. I believe that this is a new model that has great

merit. In theory, the local rabbi should be charged with the task of defending his and/or his authority's ruling. However, local rabbis often lack the expertise and information to do so.

Additionally, the wording of proclamations and responsa needs to be crafted in a way that is strong and confident but still allows for other competent authorities to disagree. This will not only tone down the rhetoric in communal discourse but also preserve the dignity and prerogative of the local *mara de-atra*.<sup>51</sup>

We have discussed how the local rabbi's authority is currently being challenged from many different sides. In multiple ways, the local rabbi's authority has diminished, to the detriment of responsible halakhic decision-making. It behooves us to consider the consequences of this continuing decline and to actively protect this embattled, age-old institution. Through a partnership of rabbis and communal leaders, we can, in some measure, increase awareness of the need for local halakhah.

## NOTES

I thank Rabbis David Berger, Arie Folger, Dovid Gottlieb, Adam Mintz, Simon Posner, Gidon Rothstein, Moshe Schapiro, David Shatz, and Dov Zakheim, and Prof. Jerome Chanes for their thoughtful comments. Of course, they bear no responsibility for the final content of this essay.

1. I am intentionally avoiding the term *daas Torah* because it is so politically loaded and religiously ambiguous.
2. First conference, September 1989, published as Moshe Z. Sokol, ed., *Rabbinic Authority and Personal Autonomy* (Northvale, NJ: Jason Aronson, 1992). Fifteenth conference, March 2003, published as Suzanne Last Stone, ed., *Rabbinic and Lay Communal Authority* (New York: Yeshiva University Press, 2003).
3. On reading this paper, you may notice the frequent appearance of the word "I," as in "I believe" and "I view." I wrote in this way with the intention of making everything provisional, one person's opinion that is subject to revision based on the input of those wiser and more knowledgeable.
4. Cf. Malbim and *Torah Temimah* ad loc.
5. Cf. *Sanhedrin* 86b.
6. *Mishneh Torah, Hilkhot Mamrim* 1:4. David Shatz pointed out that even Moses had to ask a *she'eilah*—see Num. 27:5 and Rashi ad loc.
7. *Hullin* 44b, *Niddah* 20b, *Berakhot* 63b, *Avodah Zarah* 7a.

8. The former is proposed by *Nimukei Yosef* (*Avodah Zarah* 7a), and the latter is adopted by Rashi (*Niddah* 20b, s.v. *me-ikkara*) and Ran (*Hiddushim* to *Avodah Zarah* 7a, s.v. *ha-nishal*). See R. Yehudah Henkin, *Response Benei Banim* (Jerusalem: 1998), vol. 3 no. 8, for a long list and discussion of sources.
9. This rule only applies to the specific case brought before a rabbi and not other cases. Rema in *Shulhan Arukh, Yoreh De'ah* 242:31.
10. The phrasing used is “*shavya hatikha de-issura*” and not “*shavya a-nafsheih hatikha de-issura*.” Revid *Ha-Zahav* (*Parashat Shofetim*, s.v. *asher yorukha*) has it as “*shavya hakham hatikha de-issura*.” Cf. R. Shaul Yisraeli, *Ammud ha-Yemini* (Tel Aviv: Moreshet, 2000) 1:6:4, p. 53; R. Menashe Klein, *Mishneh Halakhot*, vol. 16 (Brooklyn, 2003), no. 59, p. 173; *Encyclopedia Talmudit*, s.v. *hora'ah*, sec. 6, vol. 8, col. 507.
11. *Shulhan Arukh, Yoreh De'ah* 214; *Peri Hadash, Oraḥ Hayyim* 596:7. Cf. *Hayyei Adam* 127:10; R. Moshe Feinstein, *Iggerot Moshe, Oraḥ Hayyim*, Vol. 2, No 83. Regarding family customs, see *Pitḥei Teshuvah, Yoreh De'ah* 214:4; R. Hershel Schachter, “*Hashbei'a Hishbi'a*,” in *Beit Yitzhak* 39 (2007): 513–520.
12. It is noteworthy that the *Peri Hadash* states that such a ruling may only be overturned by a uniquely outstanding scholar, of which there is only one or two in a generation. Cf. *Hayyei Adam*, loc. cit.
13. Cf. R. J. David Bleich, “*Lomdut and Pesak: Theoretical Analysis and Halakhic Decision-Making*,” in R. Yosef Blau, ed., *Lomdut: The Conceptual Approach to Learning* (New York: Yehiva University Press, 2006), pp. 87 ff.
14. On his accomplishments, see Meir Hershkowitz, *Rabbi Tzvi Hirsch Chajes* (Jerusalem: Mosad Ha-Rav Kook, 1972); Bruria Hutner David, “The Dual Role of Rabbi Zvi Hirsch Chajes: Traditionalist and Maskil” (doctoral diss., Columbia University, 1971); Jacob Schachter, ed., *The Students' Guide through the Talmud* (Brooklyn: Yashar Books, 2005), pp. xi–xiv.
15. Although exaggerated honorifics are still a thing of the present, and this writer is equally guilty of it. See my review of the *Mahzor Mesorat Ha-Rav* in *Jewish Action* 68, no. 2 (Winter 5768/2008): 85–88. See also *Benei Banim* (Jerusalem: 2005), vol. 4, no. 26, where R. Yehudah Henkin chastises his correspondent (this writer) for addressing him in overly laudatory terms, and more generally in vol. 2 (Jerusalem: 1992), no. 35.
16. Cf. *Sanhedrin* 99b–100a regarding those who say “Of what use to us are rabbis?”
17. Hoboken, NJ: Ktav, 1993. A close reader of the book will find the following answer implicit in the words.
18. Rashi and Rambam, *Avot* 1:16.
19. *Nehama Leibowitz: Teacher and Scholar* (Jerusalem: Urim, 2009), p. 336.
20. I discussed another aspect of this in “Are Blogs Good for the Jews?” in the *Jewish Press*, October 7, 2009: <http://www.jewishpress.com/pageroute.do/40987/>
21. In reality, it tends to keep the layman better informed than the rabbi, which is a different problem.
22. We see a halakhic concept of intra-city subcommunities regarding *minhagim*.

See *Responsa of Mahari Ben Lev*, vol. 3, no. 14; *Responsa of R. Eliyahu Mizrachi*, no. 13; *Responsa Maharshdam, Yoreh De'ah*, no. 40; *Peri Hadash, Oraḥ Hayyim* 596:19. Given the phenomenon of “*shtiebel* hopping,” I would define someone’s synagogue as the one he attends on Shabbat morning (when and if he attends). David Shatz, however, pointed out that some people even alternate where they pray on Shabbat mornings. I leave defining the affiliation of such people to others, fairly certain that they cannot be defined as having more than one community any more than one who maintains residences in two cities, traveling back and forth between his two homes on an equal basis.

23. Gidon Rothstein suggested this point and added that most synagogue members have no real say in the hiring of a new rabbi.
24. Cf. R. Shaul Yisraeli, *Amud Ha-Yemini* (above, n. 11), 1:6:10; R. Shlomo Aviner, *She'eilat Shlomo*, 2nd ed. (Jerusalem: 2006), vol. 1, no. 204, par. 8; vol. 2, nos. 223, 226, 227, 254; vol. 3, nos. 259–261; vol. 4, pp. 272–276.
25. Cf. *Shabbat* 19b, *Eruvin* 94a, *Pesaḥim* 30a, *Hullin* 53b; *Tashbez* 3:210; *Sheyarei Keneset ha-Gedolah, Hagahot Beit Yosef, Yoreh De'ah* 242:17; R. Samson Raphael Hirsch, *Collected Writings* (New York: 1984), vol. 6, pp. 271–277.
26. David Shatz raised the issue of *mahloket* in this case. R. Shlomo Aviner (above, n. 24) states that the custom is to accept local rabbis as authorities on all public matters but not on private matters, for which people may consult any rabbi.
27. See my blog post of June 15, 2005, at <http://hirhurim.blogspot.com/2005/06/flatbush-eruv.html>. The local rabbis pictured on the cover are R. Shmuel Berenbaum, R. Feivel Cohen, R. Hillel David, R. David Feinstein (from Manhattan), and R. Aharon Schechter. The Israeli rabbis are R. Yosef Shalom Elyashiv, R. Chaim Kanievsky, R. Aharon Leib Shteinman, R. Shmuel Wosner, and the Gerrer Rebbe.
28. As of the completion of this paper, I cannot locate this blog post and am relying on my memory.
29. Gidon Rothstein and Dovid Gottlieb emphasized this point.
30. Gidon Rothstein pointed this out.
31. Cf. R. J. David Bleich, “*Lomdut and Pesak*,” p. 109, n. 5. While *Shulḥan Arukh* (*Yoreh De'ah* 242:14; *Hoshen Mishpat* 10:3) seems to obligate a rabbi to answer a practical halakhic question presented to him if he can, I suspect that this is only a general requirement and does not obligate a rabbi to answer every question posed to him.
32. I refer to arguments I have seen in informal discussion and not to specific published articles. I thank Arie Folger for suggesting this general point.
33. Cf. R. J. David Bleich, *Contemporary Halakhic Problems*, vol. 2 (Hoboken, NJ: Ktav, 1983), pp. 254–267.
34. I would have either asked the rabbi or said, “I think this is allowed. Let’s check with the rabbi when we have the opportunity.”
35. On the rare occasions when I am forced to answer a halakhic question in my synagogue, when the rabbi is unavailable and an answer is needed immediately, I

try to determine how the rabbi would answer and then, afterwards, tell the rabbi the entire story to give him the opportunity to disagree for future occurrences, to know that I did not try to infringe on his domain, and to be aware of the halakhic questions raised by his congregants, i.e., to know what is going on in various people's lives.

36. See *inter alia* R. Mayer Twersky, "Halakhic Values and Halakhic Decisions: Rav Soloveitchik's *Pesaq* Regarding Women's Prayer Groups," in *Tradition* 32, no. 3 (Spring 1998); a critique of this in R. Reuven Singer, "Halakhic Values: *Pesaq* or Persuasion," in *Edah Journal* 3, no. 1 (Tevet 5763); and my response to that critique in "Values, Halakhah and *Pesaq*: Continued Discussion Of 'Halakhic Values: *Pesaq* or Persuasion,'" in *Edah Journal* 3, no. 2 (Elul 5763), reprinted in my *Posts Along the Way* (Brooklyn: Yashar Books, 2009), vol. 1, pp. 176–183.
37. See, for example, "New Jews' stake claim to faith, culture" (CNN.com, October 28, 2009) at <http://www.cnn.com/2009/LIVING/10/28/new.and.emergent.jews/index.html> and "Minyanim Grow Up, Turn Inward" (*Jewish Week*, November 25, 2008) at [http://www.thejewishweek.com/viewArticle/c36\\_a14128/News/New\\_York.html](http://www.thejewishweek.com/viewArticle/c36_a14128/News/New_York.html)
38. Prof. Jerome Chanes proposed these distinctions, which require further elaboration in a more appropriate venue.
39. This ḥavurah was featured in Abba Eban's film *Heritage*, although I was not there for the filming.
40. Which side of the border depends on whom you ask.
41. Adam Mintz correctly pointed out that there is a wide variety of independent *minyanim*. I attempt here to discuss characteristics that are typical of most such *minyanim*, aware that experiences will vary.
42. One occasional attendee at the ḥavurah to which my family belonged was the wife of a prominent Conservative halakhist. I have reason to believe that her husband refused to attend on principle, because he felt that the ḥavurah undermined rabbinic authority and communal structures.
43. Blaming assistants is an intentionally generous assumption.
44. Betzalel Landau, *Ha-Ga'on he-Ḥasid mi-Vilna* (Jerusalem: 1978), pp. 253–254; Betzalel Landau, *The Vilna Gaon*, trans. Jonathan Rosenblum (Brooklyn: Mesorah, 1994), pp. 179–180.
45. Adam Mintz contributed to this formulation.
46. Cf. R. Aharon Lichtenstein, *Leaves of Faith*, vol. 2 (Hoboken, NJ: Ktav, 2004), pp. 289 ff.
47. In a sense, it is based on the rabbinic dictum "Who is respected? One who respects others" (*Avot* 4:1) and the theological concept of "measure for measure." Cf. *Shabbat* 105b, *Nedarim* 32a, *Sanhedrin* 90a.
48. Quoted in *Shulḥan Arukh*, *Yoreh De'ah* 242:13, *Hoshen Mishpat* 10:3.
49. R. Menashe Klein, *Mishneh Halakhot*, vol. 8 (Brooklyn: 2000), no. 137, p. 202; idem, *Om Ani Ḥomah* (Brooklyn: 2000), p. 332. Cf. idem, *Mishneh Halakhot*, vol. 16 (Brooklyn, 2003), no. 63, p. 187.

50. Har Berakhah, Israel: 2007, pp. 250–254, taken from his columns in the newspaper *Be-Sheva* in late 2004.
51. While newspapers that print stories magnifying disputes do much to aggravate the problem, it would be unrealistic to expect them to cooperate with preserving the dignity of the local rabbinate when so much of their revenue depends on controversy. Our “relief and deliverance” will have to come from “another place.”