

Parshiot Behar-Bechuchotai, 5770, 2010:

What is a Posek (Halachic Decisor)?

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Dedicated to the sacred memory of my sister-in-law, Ruchama Rivka Sondra, and the *refuah shlaimah* of Sarah bat Rachel, Yosef Shmuel ben Miriam, and Sheva bat Sarah Rivka.

And the L-rd spoke to Moses on Mount Sinai, saying, Speak to the children of Israel and you shall say to them: When you come to the land that I am giving you, the land shall rest a Sabbath to the L-rd. (*Sefer Vayikra 25:1-2*, this and all Bible and Rashi translations, *The Judaica Press Complete Tanach*)

These two *pasukim* (verses) begin Parashat Behar. They generate a very well known question: “What [special relevance] does the subject of *Shemittah* [the “release” of fields in the seventh year] have with Mount Sinai? Were not all the commandments stated from Sinai?” Rashi (1040-1105), basing himself upon the Midrash, provides the following answer: “However, [this teaches us that] just as with *Shemittah*, its general principles and its finer details were all stated from Sinai, likewise, all of them were stated - their general principles [together with] their finer details - from Sinai. This is what is taught in *Torat Kohanim* (25:1).” The question and answer are fundamental for understanding the Torah world-view, since they teach us the holistic nature of the Revelation at Mount Sinai. In a never to be repeated event, G-d communicated to us, in both overarching principles and in specific details, exactly what we should do to lead a life stamped in His divine image.

Living a life according to the Torah’s “general principles and its finer details” is a ceaseless challenge for the authentic, halachically committed Jew. The rapid transformations produced by technological innovations, and their concomitant

discoveries and inventions, have created a world wherein rapid change is the rule, rather than the exception. In order to ascertain *ratzon Hashem* (G-d's will), we must turn to our *poskim* (halachic decisors) to help us navigate a course through these uncertain and often murky waters. Yet, what exactly is a *posek*? What does a *posek* actually do when presented with a *sheilah* (halachic inquiry)? In addition, what is the relationship that obtains between earlier authorities and the contemporary *posek*? Moreover, what are the limits of the modern *posek*'s autonomy in his decision making process? It is to these questions that we now turn.

On Sunday, July 8, 1934, Rabbi Moshe Feinstein *zatzal*, known by his students and adherents as "Rav Moshe," was 39 years old and the rabbi of Luban, Belorussia (Soviet Union), a position he had held since 1921. His intellectual acumen and prowess were recognized far and wide, and his brilliant Torah insights and decisions were already legendary. On this Sunday, he penned a responsum (*teshuvah*) to one of his colleagues that, in part, deals with all of my above-stated questions (*Iggrot Moshe, Yoreh Deah* Section I: 101). Rav Moshe was asked: "How are we permitted to depend upon Torah novella (*chidushim*) like those that I [i.e. Rav Feinstein] have explained as having practical halachic application – when they are specifically in opposition to later day authorities (*Acharonim*)?" His answer typifies his independent and unfailing spirit in pursuit of the truth:

Behold I say: "Has an end and limitation been made for the Torah? G-d forbid! – that we should make halachic decisions solely based upon that which is found already in other works. That would mean that if questions were to arise that were not found in pre-existent works that we should not make a determination and give a decision to them – even when we have the ability to render such a decision. In my humble opinion it is prohibited to say such a thing. Beyond question, the Torah will continue to grow and develop now, and in our time. [Moreover,] anyone who has the ability to determine any law that comes before

him, according to the limits of his ability, is **obligated** to do so based upon due diligence (*chakirah v'drisha haitav*) in the Talmud and prior *poskim*.” [He must employ] clear understanding and utilize accurate proofs – even if [he develops] a new law that was never spoken about in prior works. (All translation, brackets, and emphasis my own)

Rav Moshe’s answer is unequivocal: The *posek* is obligated to respond to any and all Torah inquiries in a manner that uses the full force of his intellectual powers – even when his intensive study and analysis of the issues at hand yield a brand new *halacha l’maaseh* (practical law). The Torah, while given once in human history, continues to grow and expand in its application to all times and places.

What, however, should be the *posek*’s role in reference to laws that are explicitly found within the canon of Halachic literature? How heavily should the weight of authority rest upon his shoulders? Here, too, Rav Moshe bravely advocates, and even demands, autonomy over merely “looking something up” in one of the halachic works:

Even in regards to a law that is already found in previous works – beyond question the decisor also must understand it and render a decision according to his own thought processes (*b’daato*) before he declares it to be the law. By no account should he render judgment simply because he has found such and such a conclusion [in prior works]. This would be as if he rendered judgment simply based upon his studies. Concerning this approach, it has been stated that the Tannaim [Sages from the Mishnaic era] bring destruction upon the world when they render judgment based solely upon that which they have learned [**but failed to understand** – Rashi (1040-1105)] as found in *Talmud Bavli, Sotah 22a*.

How much leeway, however, does the *posek* really have? Can he legitimately reject prior and heretofore accepted opinions? Rav Feinstein’s answer is clear:

Even if his [i.e. the *posek*’s] decision, on occasion, stands in stark opposition to some of the greatest of our recent *Acharonim* (*gaonim merabbotainu haacharonim*) – what of it? Beyond question, even we are permitted to disagree with the *Acharonim* – and even some of the *Rishonim* [approx. 11th-15th centuries] – when we have proper proofs and the essence [of our response] is [replete] with correct [and unassailable] reasons. Concerning this idea, our Sages stated explicitly in *Talmud Bavli, Bava Batra 131a*: “A judge can only depend upon what his own eyes see.”...

For Rav Moshe, however, the *posek's* autonomy remains somewhat circumscribed. He must operate within the dictates and halachic structure that were created by the:

... famous decisors of the *Shulchan Aruch* [16th century] that have been accepted in all of our countries. Regarding this it was said: "They established a place to create a 'fence' of protection." [In doing so, one will be following in the path] of the majority of the responsa of later-day authorities who determine many new laws that are to be followed as a matter of actual halachic practice.

Moreover, in Rav Feinstein's view, the *posek* engaged in this singular creative process, "must never be arrogant and must strive to determine the law in accordance with the prior authorities [when it is possible to do so.]" There are situations, however, where potential human tragedy and need are so manifest that the *posek* is mandated to do whatever is legitimately in his power to rescue someone from a life of misery, Torah violations, or devastating financial loss:

When it is a matter of great need, and all the more so a situation wherein the woman would remain inextricably tied to her husband against her will [*agunah*] as in our case, then we are unquestionably obligated to render judgment [in opposition to prior authorities] if it appears to us that we are able to free [her]. It is prohibited for us to be from the overly humble and "tie up" a daughter of Israel, or to cause one to violate various prohibitions, or even to cause the loss of Jewish money."

Rav Moshe *zatzal* was one of the greatest *poskim* of the past century. His intellectual integrity, bravery, and honesty knew no bounds in his pursuit of truth and his desire to help all of *Klal Yisrael* (the Jewish people). He stands forevermore as a paragon of what a *posek* can and should be. May we all be *zocheh* (merit) to learn from his stellar example, and live lives dedicated to serving Hashem. *V'chane yihi ratzon.*

Shabbat Shalom

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http://home.mindspring.com/~rdbe/parashat_hashavuah/index.html.

The email list, *b'chasdei Hashem*, has expanded to hundreds of people. I am always happy to add more members to the list. If you have family or friends you would like to have added please do not hesitate to contact me via email: rdbe718@gmail.com.