

אל הלומדים

הספר הזה אשר אני נותן לפניכם היום אם שהוא כעין ספרי שאלות ותשובות רבים אשר עשירה בהם הספרות הרבנית בדרכי הגיונה. אך יש הבדל בין ספרי זה לספרי שאלות ותשובות אחרים בתולדתו ובמטרתו. כל ספרי שו"ת נולדים מן המקרים הפרטים, והשאלות נשאלות מן היחידים השואלים כענין או שלא כענין, והתשובות המה כהלכה להיחידים השואלים, והועלו על ספר לתועלת יחידים אחרים אשר יקרה להם מקרים כאלה או לתועלת הרבנים אשר יקחו מן המוכן לענות ליחידים על שאלתם. אשר לא כן ספרי זה הוא לא נולד מן מקרים פרטים רק מן מאורעות כלליות אשר גלגולי התפתחות עמנו הסבו אותם. והשאלות האלו לא נשאלות מן יחידים לבד רק [-אלא] מן העם כולו, ותשובתן המה לכל העם בכלל.¹ אך באשר לא כל העם כלו מורגל בדרכי ההגיון ההלכותי, הנני נותן אותם לפניכם הלומדים אשר אתם תהיו משפיעים להעם את תוצאותם לפי כח קבלתם כנאמר והלויים המבינים את העם (עזרא ה', ט). ומטרתן להראות כי ההלכה לא רק שאיננה עומדת למכשול להתפתחות החיים הפרטים אך [-אלא] גם לא להתפתחות העם כולו. וחדת והחיים כחיי היחיד וכחיים הצבורים אינם מפריעים זה את זה, אדרבא מועילים להיות לרגל עמידה כמו שאמרו בירושלמי (סנהדרין ד', ה') אלמלא נתנה התורה חתוכה לא היתה לרגל עמידה כאשר בארתי מאמר זה בארוכה בהקדמת ספרי "מוסדות תורה שבעל פה".²

To The Learned Ones

This book that I place before you today is similar to the many responsa volumes that have been published, each one filled with rabbinic material. However, there is a fundamental difference between my volume and the rest of the responsa literature regarding the origin and the goal. All the rest of the responsa volumes are created from a specific issue; the questions are asked by individuals and the answers are legal responses to the questioners geared to provide guidance to other individuals who might be faced with similar circumstances or for rabbis who will use the material to answer other questions. However, my book is not like the others as it does not grow from a specific event rather it emerges from broad social categories that confront our people. These questions have not been asked by individuals but by the entire nation and the responses are for all the people. Yet, since not everyone is versed in halakhic reasoning, I am presenting these responsa to the learned so that they can share it with the people according to their abilities as Ezra describes the role of the Levites in Ancient Israel. The purpose of this book of responsa is to show that the halakhah is not an impediment to the development of the Jewish people in general society. Religion and life do not interfere with one another, whether on a personal or communal level, rather, they strengthen one another,

FIRST We declare for political and civil equality irrespective of race, sex, or faith of all the inhabitants of the land.

SECOND To insure in the Jewish national home in Palestine equality of opportunity we favor a policy which, with due regard to existing rights, shall tend to establish the ownership and control by the whole people of the land, of all natural resources and of all public utilities.

THIRD All land, owned or controlled by the whole people, should be leased on such conditions as will insure the fullest opportunity for development and continuity of possession.

FOURTH The co-operative principle should be applied so far as feasible in the organization of all agricultural, industrial, commercial, and financial undertakings.

FIFTH The system of free public instruction which is to be established should embrace all grades and departments of education.

SIXTH Hebrew, the national language of the Jewish people, shall be the medium of public instruction.²⁰

The American Zionist movement was enjoying a period of tremendous wartime growth at this time, evidenced by a fourfold increase in membership since 1914. Delegates, amidst "a demonstration of unequalled fervor and earnestness," had just agreed to a massive reorganization of American Zionist activities, along the lines advocated by Louis Brandeis. Henceforward, American Zionism would be guided by a single national organization, the Zionist Organization of America, to which every Zionist would at least in theory belong. These developments, coupled with the November 1917 Balfour Declaration pledging British support for a Jewish homeland in Palestine, General Allenby's triumphal entry into Jerusalem promising "a new era of brotherhood and peace in the Holy Land," and Woodrow Wilson's fourteen-point list of American war aims made the Pittsburgh Program timely indeed.²¹

20 *The Maccabean* 31 (August 1918); 237. Many scholars cite other texts of the Pittsburgh Program, which vary from this one in significant ways (see note 22), but this text would seem to be authoritative.

21 *The Maccabean* 31 (August 1918); 237, 240, 254, 256; Jehuda Reinharz, "Zionism in the USA on the Eve of the Balfour Declaration," *Studies in*

Democracy and Halakhah

The words of the Torah — “whose ways are pleasant and whose paths are peace” — contain nothing which contradicts genuine civilization or which would ever requires us to do anything contrary to reason.... True, we must base ourselves on the Torah and its *mitzvot* and reflect upon them according to the methods of “our sages, blessed be their memory,” as well as understand their words according to the objectives toward which they aspired when they interpreted the *mitzvot* — then we shall see that they loved truth and peace.... For only the Zaddokites and, later, the Karaites — who did not fathom the inner meaning of Scripture and the purpose of Torah and the aspirations of our sages — were discomfited by political life and thought it incompatible with what was of the essence for them and therefore that it contradicted the Torah; they raised religion above political life, and in their self-justification set themselves apart like the Essenes in Second Temple times, and like the Karaites in Jerusalem at the end of the Gaonic period (*Malki BaKodesh*, Vol. 1, p. 21-22).

Halakhic logic is not merely a formal-legal logic; it also has an aspect of straightforward reasoning by its adjudicators whose criteria is whatever they regard as flowing from the knowledge of the true and the good. Thus, in order to arrive at a *halakhic* ruling, adjudicators should not base their decisions only on the dry letter of the law, but delve into “the soul of Scripture” to uncover the ethical, social and religio-spiritual considerations upon which each former ruling was based. In this way their rulings would be established on a living religio-ethical spirit. One should, therefore, endeavor to uncover the internal motives for why the early adjudicators ruled as they did.

Not for a moment did Hirschensohn believe those rulings contrary to reason and morality. Sufficient precedent, he felt, could be found in *halakhah* for every decision which was required and had to be made in accordance with contemporary reason and morality. In the following incisive passage from a polemical letter to Rabbi Kook, his intention is clear.

I do not believe that everything I am struggling for should remain unchanged from a moral standpoint. I know that from a true, moral standpoint much needs to be changed and in my book, *Musagei Shav V'HaEmet*, I enumerated many of the false concepts which people believe to be correct though they are bound

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On a Democratic State According to Halakhah

people's development. The questions were not posed by individuals alone, but by the entire nation, and their answers are directed to the nation as a whole (*op. cit.*, Part One, p. 20).

The quotation can be summarized by paraphrasing a well-known democratic aphorism: these are questions from the people, about the people, and answered for the people. It was of utmost importance that the entire people learn and know the *halakhic* rulings which regulated their lives, not only so that they might express an opinion but to help determine standards of appropriate behavior. In this way, obedience to the Law becomes conscious and voluntary since it is born of true understanding.

To Rabbi Hirschensohn's mind, the essence of the relationship between religion and nationalism in Judaism is the Torah as the covenant made with the people of Israel. For him, this momentous occasion laid the foundation for a pure democracy that maintains national independence since the covenantal status of society articulates the voluntary commitment of the members of the nation to each other and, together, to God. Hirschensohn frequently reiterated his view of the covenant as the basis of the Torah's hegemony over the people. For example:

In my humble opinion, this is the underpinning for one of the great principles of Jewish faith — of its religion and nationality; it is the pillar of the entire Torah and the commandments. It is one of the basics of our faith that the Holy One, Blessed be He, did not set Himself up as a tyrant over His creatures, and just as He does not want one man to rule over another except for his good, so He would not want to force anyone to observe the commandments against his will nor to enter the Covenant at Sinai and desert of Moab unless these commandments were accepted willingly.... God does not wish to appear as an overlord toward the people of Israel but to be their Lord by entering into a covenantal relationship with them.... Whatever the case, it is clear to us that the people of Israel took a voluntary oath to live according to the Torah and its commandments, and inherent in that vow is the true national bond in which the individual renounces his self-interest in favor of the group, and each person commits himself to the greater whole.... The result of this is that our obligation to the Torah and to every one of the Divine

Democracy and Halakhah

commandments is grounded in this covenant and is not by virtue of the authority of the nation's wise men, judges and elders. For if the Torah had been forced on the people, then it would have been a decree from above rather than a voluntary act of acceptance of the Law, in accordance with God's will. Only after the nation was united by entering into the covenant and willingly promised to observe the Law did the people choose judges and elders from among themselves to ensure the guardianship of their oath, as is the case whenever any nation accepts a constitution *ab initio*, only afterwards delegating authority to judges and officials of the people. This was the rule not only at Sinai, but everywhere and at all times in Jewish history....

So we see that the Courts are invested with power by public consent, and without this the Courts are powerless.... Yet if we are talking about the power of the entire nation, we must note that, as seen in Tractate Horayot, 3:2, the rabbis said: since the majority agrees, the individual or the minority must accept the decision of the majority. This is stated explicitly in the Torah (*Malki BaKodesh*, Part 3, pp. 80-81).

✓ Hirschensohn's *Eileh Divrei HaBrit* is a three-part halakhic-historical analysis of all of the covenants noted in the Bible. His aim in this work is a systematic and developmental exposition of the concept of the covenant in Judaism, based on the assumption that both the political and religious aspects of Jewish nationalism evolved from a series of covenants. Each covenant defined a specific facet of national life according to the needs of the time: the relationship between the Patriarchs and God; between the people and God; between individual members of the nation and between the tribes; the covenant determining settlement of the Land of Israel, and the covenants between Israel and other nations. For Hirschensohn, the covenant is the basis of all authentic human relationships.

What then is the essential quality of the covenant? A passage parallel to the one quoted above stresses the uniqueness of the biblical covenant even more conclusively than the previous segment.

And the most wondrous result of all this is that the obligation to observe the commandments, according to the opinion of all the Talmudists, was not an order since the Holy One, Blessed be He,

silent in time of war is subject to the death penalty since his silence jeopardizes the welfare of the state. The Jew, who is constantly defending his religion, is always in a holy war. Thus, he who has the opportunity to protest when necessary and declines to do so is guilty of a capital offense. Moreover, since all other Jews are responsible for him, he is called a transgressor against each individual Jew. The Jewish religion has defined the appropriate punishment for all those who have an opportunity to speak out against evil and refrain from doing so (*Eileh Divrei HaBrit*, Part 2, pp. 63-64).

In other words, the commitment to God is a personal commitment made by each individual. As a result, every person is responsible before God not only to society as a whole but, to the extent that his deed impacts on society, to every member of society. This is also true for relations between different sectors of the nation, or between tribes.

In the same way, the tribes have a special obligation to each other since Israel is one nation, despite the fact that it is divided into twelve tribes. We have some indication of this in the United States of America. The American constitution attempted to model the nation on the Bible. Consequently, the country was divided into separate states...and though each state has its own special statutes, all the states — with a star representing each one — are united under one flag; each must be loyal to the federal union which unites all of them in mutual responsibility. Now, for the Jewish state there is an added dimension to this mutual responsibility. What holds for relationships between individuals, as I have explained, holds for the tribes...Israelite tribal unity differs qualitatively from state unity in America since the latter is manifested only in matters pertinent to the United States as a whole, and the federal government is not allowed to intervene in the internal matters of any state. This is not the case among the tribes of Israel. Though their separateness is expressed by their flags, in matters of injustice or infringements of morality, or ritual concerns, each of the tribes is responsible for the other (*op. cit.*, Part 3, p. 33).

מכתב להטוילים

הננו נותנים בזה תמצית מכתב ארוך אשר קבלנו מרוב נכבד חבר אנגלי תרנגים
אמריקאיים אשר בארצות הברית וקנדה.

... גם צריך לבוא בו שאלות תלבות של חסן. הן בדברים המתחייבים בכל מ, אשר נחם התורה והלח, הן בדברים אשר מצב תחיים ספריה להכפית אתו דרך חיתר ועד שימכלו באשור יאכלו בהיור. ותה ספרים התחייב פחד יסרינת זו וביחוד יחזק עיי זה כה ורפניה ואדסטרקטית, בהודע חתום צי. הן הקב"ה גם בפרטית עם ברוחיו ורננתם ירצים מה חסן הדין מרמה, וגם יתן מקום להקדמים להתכין בשאלות תאלה

דעת מקל כלל, ג) העובדים על מלכתה
דטורייתא פלונס פרנסה, ד) דין מחללי
שנת נפרהסיה נשגיל פרנסה מרווחה
ותלות פתון, ה) דין מחללי שנת נפרהסיה
נשגיל נפש, ו) שאלה הזאת מתחלקת לשלשה
א) דין סתגוללים, ב) דין נערים קלי
הדעת הנתיים לדברי עתרים כופילגרים
המטפטים בדעות גבוהות ואמים נשמים
כיהם, ג) סתעים גלמודם ונתום לנג
יגשאים כשורנאפלה ולח ידעו נמה יכשלו
ז. נדנר הרננים המדקדקים עם
האחמים כחוט השערה.
ח. על דבר חלוב הנהמות נשגת
וירט נמקום שאין הצרים חפצים לחלוב
נסמות ישראל.
ט. דבר חוסן עכידת חסן נאלס
אנושאים: זוטמים נחמן נפסת.
י. נדנר נאולי מינקת אשר סילר
הוא מילדי זמנים.

א. אם יכולים את היסוס לגמיה
היחד לחיזה חיסור ודננן עיי סכלל
דגורה שלח נתכשטה נרונ סנוד יכולין
להחירה עיי נירד קטון?
ב. עיד החמוס נשגת למגביל
אנחנאל כל זרם עערג שנת?
ג. עיד התמד שמועדים לח פלוחים
נלמעריקא שערנים אמן טחל נלחם?
ד. עיד גילוח הזקן אשר נערי
תמעריקא כמעט חגוסים נוכ.
ה. עיד גניטות נכרים אשר מעעדים
לוחם נמיני עשנים ונכיות הרכות כמו
כאט וקרים אשר אין נהם פילי.
ו. דין חלה שחללים שנת נפרהסיה
נארץ הזאת והשאלה נחלקת למעשה
חלקים א) דין העובדים על חיסורי
ודננן אשר נחלה נהם דעת עוקל רק
שפוסקים כהמתמיד, ב) דין העובדים
על חיסורי ודננן נחוד אשר אין סהם