

Chazara on Methodology of Psak

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Background: What does it mean for something to be true Halachically?

- Are there multiple truths (within limits) and psak limits what possibilities are legitimate? (Rabbi Shaul Yisraeli in Ritva)
- Is there one truth but we are not necessarily expected to reach it? (Rabbi Moshe Feinstein) Is it okay to knowingly not reach it? (Rabbi Yehuda Amital)

The Building Blocks of Pesak

1. Theory
 - a. Analysis of Original Sources
 - i. Emphasized by Yam Shel Shlomo (in opposition to Shulchan Aruch), Gra, Biur Halacha, Aruch HaShulchan (though you must add minhag)
 - ii. Narrative in Halachic texts?
 1. Support, Modify, Reject?
 - b. Precedent
 - i. Beit Yosef's שלשה עמודי הוראה
 1. Assumes a kind of Rov that is not obvious.
 - ii. Mishna Berurah
 - iii. What do you do when there are new manuscripts or new Rishonim?
 1. Machoket concerning Eruv (Mishkenot Yaakov vs. Beit Efraim)
 2. Position of the Chazon Ish?
 3. Techelet – Rav Schachter
 - iv. What is the role of Kabbalah?
 1. Stronger than other sources, a factor, or irrelevant?
 - c. Minhag
 - i. Rama's addition to Mechaber
 - ii. Aruch HaShulchan vs. Mishna Berurah
 - iii. Minhag HaPoskim
 - iv. Minhag Yisrael
 - v. Minhag HaMakom
 1. Classic sugyot
 2. Can it be recreated in theory? Have we in practice?
 - vi. Minhag Avot
 1. Same as Minhag HaMakom?
 - a. Rav Ovadiah Yosef's position concerning Shulchan Aruch
 - vii. Lo Titgodedu
 1. Likula or Lichumra?
 2. Two Torot or Machloket?
 - a. Is it better or worse to agree to disagree?
 - viii. Can use academic methods to understand this (Purim)
2. Implementation
 - a. Assessing all the relevant sugyot
 - b. Assessing the reality
 - i. What if Chazal's science seems incorrect?
 1. Assume Chazal were right on the reality
 2. Assume the law is not really based on the reality
 3. Change the Halacha – as safek or vadai
 4. Different circumstances?
 - a. Treifah, Spontaneous Generation
 - c. Assessing the spirit of the law
 - d. Policy
 - i. Difficult to determine when this is needed and who makes that decision?
 - ii. Is it psak or different?
 - e. Slippery Slope

- i. Protect Torah
 - ii. Do we need to be straightforward or can we obfuscate?
 - 1. Asmachta?
 - 2. Hungary
 - iii. Has it changed?
 - iv. Mix of slippery slope and fundamental problems – R Moshe on feminism
 - v. Balance against cost (See follow-ups on blog)
 - 1. Ein Gozrin Gezerah
 - 2. Gzeirah L'Gzeirah
 - 3. Common?
 - 4. Alternate Method
3. Exceptional Cases – Pesikat Halacha BeSha'at HeDechak and Akirat Davar Min HaTorah
- a. Assumes a result before starting the process.
 - b. Akirat Davar Min HaTorah – Will get to result no matter what
 - i. Dangerous, often used in conjunction with normal rules to make it unclear whether it is being used and limit misuse.
 - 1. Sridei Esh on Kol Isha
 - 2. Taking money for Talmud Torah – Kesef Mishna, R. Moshe
 - 3. Rav Ovadiah Yosef on marrying Karaites
 - ii. Assumes that the Torah itself is eternal, but to preserve the Torah for Rov Klal Yisrael we can be mekal
 - 1. An attack on the Torah itself is illegitimate
 - c. Pesikat Halacha BeSha'at HaDechak – a propensity to rule a certain way, but willing to take no for an answer. Weigh the plausibility against the necessity.
 - a. Must contend with questions of Rov of shitot – does it have status of Rov (Shach vs. Bach)
 - ii. Kavod HaBriyot
 - 1. Exceptional cases, accidental intersection with Halachic system, not an attack on Torah
 - 2. God could ask us to give up our honor.
 - 3. For others? For you?
 - iii. Hefsed Merubah
 - 1. How much?
 - 2. Only when it is really mutar mikkar hadin?
 - 3. Kavod Shabbos?
 - 4. Defined by object or by entire picture?
 - 5. Objective or subjective?
 - iv. Minhag (above)
 - v. Yuhara
 - 1. Taking on wrong status
 - 2. Arrogance
 - 3. Presumptuous
 - 4. Causing Machloket, separates one from the community?
 - 5. Impugns others
 - vi. Chillul HaShem
 - 1. Add issurim
 - 2. Likula, lichumra
 - 3. Jews or non-Jews?
 - 4. Punishment?
4. Who?
- a. Someone who can balance all of the above
 - b. Different questions need varying levels of authority
 - i. Chiddush or no?
 - ii. Prevent Issur
 - c. Might be different for one's self, on private issues
 - d. Integrity
 - e. Analysis, scope, experience