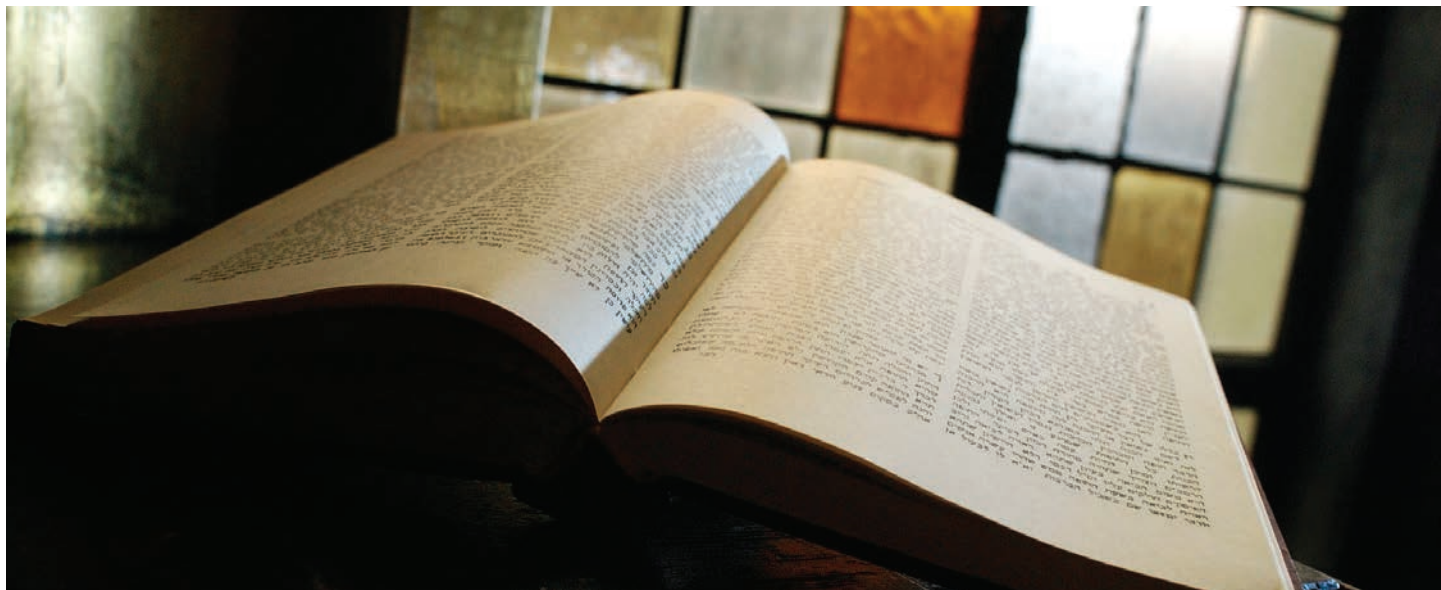


Heritage and Innovation

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Rabbi Schachter, a noted Talmudic scholar, has had a distinguished career with RIETS for over 40 years. He joined the faculty in 1967 at the age of 26, the youngest rosh yeshiva at RIETS. Since 1971, Rabbi Schachter has been rosh kollel in the Marcos and Adina Katz Kollel (Institute for Advanced Research in Rabbinics) and also holds the Nathan and Vivian Fink Distinguished Professorial Chair in Talmud. In addition to his teaching duties, Rabbi Schachter lectures, writes and serves as a world renowned decisor of Jewish law. A prolific author, he has written more than 100 articles, in Hebrew and English for such scholarly publications as *HaPardes*, *Hadarom*, *Beth Yitzchak* and *Hamizrach*. His books include *Eretz HaTzvi*, *B'ikvei HaTzon*, *Nefesh HaRav*, *MiPinei HaRav* and *Ginat Egoz*. At age 22, Rabbi Schachter was appointed assistant to the renowned Rabbi Joseph B. Soloveitchik.



OBSERVING TORAH IN AN AGE OF INNOVATION

In Parashas Toldos, we find that Yitzchak Avinu tried his best to continue the legacy he received from his father Avraham Avinu. He even dug the same wells his father did and called the wells by the same names. When there was a famine, Yitzchak thought that the best course of action was to go to Egypt, just as his father did when he experienced famine. However, Hashem told Yitzchak not to go but to remain in Eretz Yisrael. Rashi (26:2) tells us why Hashem wanted him to remain in Eretz Yisrael:

”אל תרד מצרימה” - שהיה דעתו לרדת למצרים כמו שירד אביו בימי הרעב אמר לו אל תרד מצרימה שאתה עולה תמימה ואין חוצה לארץ כדאי לך.

“Don’t go down to Egypt” — because [Yitzchak] thought to go down to Egypt just as his father did in times of famine. [Hashem] said to [Yitzchak], “Don’t go down to Egypt because you are [sanctified like] a burnt offering without blemish and you do not belong outside of the Land of Israel.

Yitzchak thought that going to Egypt would be a continuation of his father’s legacy. But Hashem told Yitzchak that he was living in different times under different circumstances. For Avraham, the proper course of action was to leave Eretz Yisrael and go to Egypt. But, said Hashem, you were consecrated as an offering at Akeidas Yitzchak. You cannot leave Eretz Yisrael because for you, leaving would

not be a continuation of Avraham’s legacy but a violation of it.

The same conversation took place between Hashem and Yehoshua. When Yehoshua defeated Yericho, he placed a *cherem* (ban) on the spoils. Achan didn’t listen and partook of the spoils, unbeknownst to Yehoshua. As a result, the Jewish people were defeated at Ai. The Gemara, *Sanhedrin* 44a, states that when Yehoshua asked Hashem why they were defeated, Hashem replied “*atah garamta lahem*,” it is your fault because you shouldn’t have placed a *cherem* on the spoils of war.

The Maharsha, *ad loc.*, asks: Why did Hashem blame Yehoshua? He was simply following the actions



In describing Matan Torah, the verse (Shemot 20:15) states:

וְכָל הָעָם רָאִים אֶת הַקּוֹלֹת וְאֶת הַלְפִידִם
וְאֶת קוֹל הַשּׁוֹפָר וְאֶת הַהָר עֹשֵׂן וַיֵּרָא הָעָם
וַיִּנְעוּ וַיִּעַמְדוּ מֵרָחֵק.

*The whole nation saw the thunder
and the lightning and the sound of the
shofar and the mountain smoking.
The nation saw and they trembled
and stood from afar.*

How is it possible to see the sounds of the thunder? R. Chaim Tzanzer, *Divrei Chaim* to Yitro suggests that the reason why we normally can't see sounds is because there are too many other sensations we are feeling at the same time; we are distracted. At Matan Torah, the Jewish people reached the level of a prophet who is able to block everything else out and actually hear the sounds with the clarity as if actually seeing it. From this perspective, Matan Torah serves as the paradigm of distraction-free learning.

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of his rebbe, Moshe Rabbeinu. The same passage in the Gemara states that when Moshe led Bnei Yisrael to war, he placed a *cherem* on the spoils on three different occasions and Achan violated all three of those bans as well. Why, then, was Yehoshua criticized for placing a *cherem*? The Maharsha answers that the circumstances were much different. Before the Jewish people entered Eretz Yisrael, the responsibility of one Jew for another — *kol Yisrael areivin zeh bazeh* — wasn't yet in effect. As such, when Achan violated the *cherem*, only he was punished. However, once the Jews crossed into Eretz Yisrael and *kol Yisrael areivin zeh bazeh* set in, each Jew was responsible for the actions of another and the Jewish people were punished for the sin of Achan. The principles that Yehoshua learned from Moshe Rabbeinu remained the same, but he lived in different times and those same principles applied differently to the new circumstances.

The Torah Never Changes

The Siddur contains a summary of the Rambam's "Thirteen Principles of Faith." The ninth one is:

אֲנִי מֵאֲמִין בְּאֵמוּנָה שְׁלֵמָה שְׂזֵאת הַתּוֹרָה לֹא
תֵּהָא מְחֻלָּפֶת וְלֹא תֵּהָא תּוֹרָה אַחֲרֵת מֵאֵת
הַבּוֹרֵא יְהִי בְרָךְ שְׁמוֹ.

*I believe with full faith that this Torah
will never change and there will never
be another Torah from the Creator, His
name shall be blessed.*

Why is it that the Torah can never change? Why can't Hashem send us prophecies in later generations with new ways to serve Him? The explanation is given by the author of the Tanya as well as by Rav Chaim of Volozhin who both develop the

identical theme. The Torah is not merely a collection of laws. In its entirety, it constitutes a description of G-d's essence. Of course we can't really comprehend His essence. One of the Jewish philosophers of the Middle Ages (cited in *Derashos Haran* no. 4) commented that, "if I would understand Him, I would be Him." The only One who can understand *Elokus* (Divinity) is G-d Himself. Nonetheless, He gave us the Torah which by way of *moshol* (analogy) constitutes a description of *Elokus*. It is for this reason that the Torah is described as "The *Moshol HaKadmoni*," the *moshol* of *Hakadosh Baruch Hu* (see Rashi to Shemos 21:13). Rav Chaim of Volozhin comments that it would probably be more accurate to say that the Torah is a *moshol* of a *moshol* of *Elokus*, as opposed to assuming that it is a direct *moshol*.

The prophet Malachi (3:6) tells us that G-d's essence never changes. Everything in the creation is subject to change, but G-d the Creator never changes. Since our tradition has it that the Torah is a description (even if only by way of *moshol*) of *Elokus*, and the prophet Malachi tells us that G-d's essence cannot be affected by change, it therefore follows that the laws of the Torah can never change.

Rabbi Soloveitchik suggested that if he were formulating these principles, he would have added a fourteenth principle — a corollary to the ninth principle. This fourteenth principle is that the Torah is meaningful in every generation and to every society. The laws of the Torah are not subject to change. Technological advances and societal norms cause the circumstances to change, and the rabbis in each generation have to

figure out how to apply those same laws and principles to its generation.

When we learned the laws of kosher in *Yoreh De'ah* with Rabbi Soloveitchik, we encountered the case of a non-kosher utensil that was mixed with many kosher utensils. Based on the principle of *rov* (majority), the mixture of utensils should all be considered kosher since the non-kosher utensil represents a minority of this mixture. However, this case appears in a *siman* (chapter) dealing with the rule of *davar sheyesh lo matirin* — the rule that if the mixture can become permissible without applying the principle of *rov*, then the principle of *rov* cannot be applied. Should we assume that since the mixture of utensils can become permissible by *kashering* the entire mixture in boiling water, that the *davar sheyesh lo matirin* rule should be applied? Rav Yosef Karo, *Yoreh De'ah* 102:3, rules that since it is expensive to *kasher* all of the utensils, it is not considered a *davar sheyesh lo matirin*. Therefore, all of the utensils are permissible. Rabbi Soloveitchik pointed out that Rav Yosef Karo lived in a time when there was no modern plumbing or water-heating methods. He lived in the hills of Tzfat where finding water and heating was in fact costly. However, with the advent of plumbing, water heaters and modern stoves, the cost of *kashering* all of the utensils is negligible and in today's times, if such a situation would arise, we would be required to *kasher* all of the utensils.

Often there is a *siman* in *Shulchan Aruch* that deals with a single topic. The Vilna Gaon, who usually cites the Talmudic sources for the ruling in *Shluchan Aruch*, will point out that the source for the ruling in some

of the later *se'ifim* (subsections) is the same source as the ruling in the first *se'if*. Essentially, there is one principle for that *siman*, but there are different situations where that principle is applicable, and depending on the situation, the ruling will be different. When new technologies are introduced, a rabbi's job is to figure out the component parts of each *se'if* and what makes us apply the principle one way in situation A and another way in situation B. By doing so, he should be able to determine which *se'ifim* are applicable to the question that he is dealing with.

Scientific Innovation and Halachic Determinations

There are many scientific innovations such as chemical analysis and DNA testing that allow us to find out information that wasn't available in previous generations. Can we use scientific findings to make halachic determinations?

There is a dispute among the Tannaim as to whether rice can become chametz or not. Most of the rabbis were of the opinion that it does not become chametz, while Rav Yochanan ben Nuri held that it does become chametz. The Yerushalmi, *Pesachim* 2:4, asks: Why didn't they perform an experiment and see whether it becomes chametz? The Yerushalmi answers that they did perform an experiment. Most of the rabbis saw the results of the experiment and determined that what they were looking at wasn't chametz but rather *sirchon*. Rav Yochanan ben Nuri looked at the same results and classified it as chametz.

We see from the Yerushalmi the importance of using the best

information available in order to arrive at a halachic decision. Rabbi Soloveitchik used to contrast the Rabbinic approach with the Greek approach. The Greeks felt that using their hands to experiment was not for the noble class. Only servants use their hands. Therefore, they would philosophize about various topics — why fire goes up, why water goes down, why water puts out fire — without performing any experiments to back their claims. By contrast, halacha requires that the *posek* has the best information available. This is illustrated by a comment of Dovid Hamelech (in *Berachos* 4a), who said that while the kings of all the other nations sit on their thrones, his hands are dirty from studying blood of miscarried fetuses in order to permit women from their *niddah* status.

The Ramban (*Chiddushim* to *Chullin* 42a and *Milchamos, Shabbos* 48a) follows the principle of the Yerushalmi and notes that Chazal didn't arbitrarily take positions on facts that could be determined based on experimentation. If we find a dispute that seems like a dispute about facts, we should assume that Chazal did experiment and that the dispute is about how to interpret the results.

When Rav Yitzchak Herzog was the Chief Rabbi of Israel, a dispute arose in the *beis din* about a paternity case in which the ex-husband of a divorced couple claimed that he wasn't actually the father of the child. A blood test was performed and based on the blood types of the ex-husband and the child, it was determined that he could not possibly be the father of the child. Some of the rabbonim on the *beis din* were reluctant to accept the blood test as evidence. They claimed that halacha doesn't recognize a blood test as a

form of evidence. Rav Herzog wrote a letter stating:

לא אכחד כי כמעט בושתי ונכלמי מדברי
כ"ג ... ביחס של ביטול כלפי בדיקת
הדם מהבחינה השלילית, כלומר מבחינת
האפשרות שיש לה לברר שאין זה בנו של זה.
מה שייך לדבר על נאמנות הרופאים בדבר
שנתקבל לברור מכל גדולי המדע הרפואי
בכל העולם כולו ... חבל שבעוד שהמדע
הולך וכובש עולמות ומגלה סודי סודות, אם
כי גם הוא טועה לפרקים, אנו בקשר לעניני
מדע הנוגעים לתורה"ק משקעים ראשינו בחול
כהעוף הידוע, ותו לא מידי. הכרחי שנעמיד
מתוך הישיבות הק', מהעילויים שבהם,
אנשי מדע בכל מקצוע כזה ולא נהי' זקוקים
לאחרים בעניני פיזיולוגיה, כימיה, חשמל ובכל
הנוגע לתורה"ק.

I do not deny that I was almost embarrassed ... by what you wrote ... in such a deprecating manner towards blood tests, from a negative aspect. That is, with regard to the possibility that [a blood test can] clarify that X is not the son of Y. How can there be a question of the credibility of the doctors in a matter which has been clearly accepted by all the masters of medicine throughout the entire world! ... It is unfortunate that while science is progressively conquering worlds and discovering all sorts of secrets, although it too errs at times, we, like ostriches, bury our heads in the sand. It is imperative that we encourage the ablest students of the yeshivot also to be educated as men of science in each discipline, so that we should not need to turn to others in matters of physiology, chemistry, electricity, etc. concerning things that relate to our sacred Torah.¹

Chazal always based their halachic rulings on the science that was prevalent in their time. They followed the consensus of scientists and doctors and we have to apply our halachic rulings based on the science of our times.

New York State has laws that ban proprietors from selling non-kosher foods and labelling them as kosher. Rabbi Sholom Rubin was an inspector for New York State and used chemical tests to determine that a certain proprietor who was labelling his meat as kosher was not salting the meat. At the hearing, the proprietor claimed that the chemical test was invalid because according to Rabbi Soloveitchik, one cannot use chemical tests for halachic evidence. The proprietor's claim is preposterous and totally inconsistent with Rabbi Soloveitchik's worldview.

Even when accepting scientific evidence, we must use halachic principles to determine how much weight to give to the evidence.

Even when accepting scientific evidence, we must use halachic principles to determine how much weight to give to the evidence. Sometimes scientists can determine something with 100% certainty and sometimes their determinations are based on statistics or assumptions. In these situations, halachic principles such as *rov* (statistical majority) and *safek* (doubt) must be applied.

Innovations in Torah Ideas

While the Torah never changes, the Torah is dynamic and there is still room for "*chiddushei Torah*," innovations in Torah ideas. The Gemara, *Menachos* 29b, teaches us that when Moshe Rabbeinu was receiving the Torah at Sinai, he

was shown a vision of Rabbi Akiva teaching his students and offering interpretations of the Torah based on the crowns on top of certain letters. Moshe Rabbeinu felt faint because he couldn't understand anything that Rabbi Akiva was saying.

How is it possible that Moshe Rabbeinu didn't understand Rabbi Akiva's teachings? Isn't it a fundamental principle of faith that the entire Torah was given to Moshe Rabbeinu? The answer can be found in the next part of the story. Moshe Rabbeinu felt better when he heard a student ask Rabbi Akiva, "What is the source of a certain halacha?" and Rabbi Akiva responded that it was a "*halacha leMoshe miSinai*." In other words, all of the Torah, even in the days of Rabbi Akiva as well as today, is a legitimate development of Toras Moshe, based on the use of the "*middos shehaTorah nidreshes bahem*" — the hermeneutical principles that were given to Moshe in order to interpret the Torah, and therefore everything is implicitly "included" in what was given to Moshe. He was given the text with the "*middos*," and when applying these "*middos*" to the text, all the details of the halacha as we know it today follow automatically. The "*middos*" simply guide the rabbis in their task of reading "in between the lines" to obtain a fuller picture of each mitzvah.

Rabbi Soloveitchik (*Uvikashtem Misham* pg. 49) noted that there are two terms that have similar meanings but connote different ideas: *shinui* and *chiddush*. *Shinui* is a decision to stray from our tradition. *Chiddush* is innovation that works within our tradition and adds new depth to it. Torah literature is replete with "*chiddushim*," ideas that build upon the

chiddushim of previous generations but are wholly rooted in our tradition, both in form and in substance. These *chiddushim* further perpetuate our tradition. When innovation is not rooted in our tradition, it is considered *shinui*.

In a certain sense, Torah is the one area ripest for innovation. Rashi on Koheles (1:9), commenting on the verse “*ein kol chadash tachas hashemesh*” — there is nothing new under the sun, writes:

בכל מה שהוא למד בדבר שהוא חליפי השמש אין בו חידוש לא יראה אלא מה שהיה כבר שנברא בששת ימי בראשית אבל ההוגה בתורה מוצא בה תמיד חדושי טעמים.
In whatever he learns, in a matter that is an exchange for the sun, there is nothing new. He will see only that which already was, which was created in the six days of creation. But one who engages in the study of Torah constantly finds new insights therein.

The Chazon Ish was asked regarding this Rashi, isn't the opposite true? The world is full of innovation. Every day there is a new invention and the world today looks totally different than it did even one generation ago. However, the Torah that we learn is the same Torah that we have learned for generations. What does Rashi mean? The Chazon Ish answered that all of the innovations that we see in today's world were available to us from the creation of the world. We didn't discover them until recently, but we always had the ability to produce

them using the laws of nature that were part of creation. However, in each generation, there are novel Torah ideas that didn't exist in previous generations. These ideas reflect the will of Hashem, but they don't enter this world (*tachas hashemesh*) until the idea is expressed by a *talmid chacham* (*Pe'er HaDor* Vol. III pg. 79).

The Chazon Ish's comment echoes the idea that true *chiddushei Torah* aren't necessarily a reflection of how the Torah was understood when given to Moshe Rabbeinu. They are new ideas that didn't exist previously, but rooted in the “*middos*.” This idea also emerges from a comment of the Chida, in his commentary to Megillas Rus (*Simchas Haregel* 4:12). Chazal (*Yevamos* 77a) teach us that until Boaz married Rus, it was presumed that the prohibition against marrying a Moabite convert applied both to male and female converts. Shmuel Hanavi and his *beis din* interpreted the verse to mean that it only refers to males and not to females. Does this mean that from the time the Torah was given, there was never a prohibition against marrying a female Moabite convert? The Chida suggests that perhaps Moabite women were prohibited until the time of Shmuel Hanavi and it was only after his interpretation that Moabite women were permitted. The permissibility of marrying a Moabite woman was an innovation that didn't exist in previous generations.

Shavuot celebrates *ma'amad Har Sinai*, when the entire Torah was

A number of reasons are given as to why Megillat Rut is read on Shavuot. One suggestion (see R. Yehuda Leib Maimon's *Chagim U'Moadim* pp. 271-272) is that Megillat Rut is a symbol of the Oral Tradition. While the Torah (Devarim 23:4) prohibits Moabites from marrying into the Jewish people, our rabbis (*Yevamos* 77a) teach us that this is only true of Moabite men, not Moabite women. By reading the megillah on Shavuot, including the last few verses, that state explicitly that King David was a product of the marriage of Boaz and Rut, we are affirming our belief in the Oral Tradition. The Oral Tradition that allowed Boaz to marry Rut, against the simple meaning of the text, is an equal partner with the Torah text and both were given together at Matan Torah.

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given to Moshe Rabbeinu. While the Torah is the same Torah, it continues to speak to us and convey Hashem's message. The *chiddushei Torah* of each generation reveal aspects of *Elokus* that we can relate to in our generation. May we all be *zoche* that our study of Torah and how it applies in this generation will lead to a greater appreciation of the Divine.

Endnotes

1 The letter appears in an article by Prof. Dov Frimer, *Assia* vol. 35. The translation is taken from an English version of the Prof. Frimer's article in *Assia*'s English language publication.



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