

JUSTICE OR FANCY?

by Rabbi Aron Tendler

The institution of the "Rabbis" is the single most profound anthropological and sociological factor in the make up of the Jewish people. Their appointment in this week's Parsha (17:9-13) as the interpreters and teachers of G-d's intentions has insured the survival of our people and way of life. Without fail, whenever there has been a major schism within the Jewish people it has been over the power and position of the Rabbis. Those who have adhered to their teachings have survived the onslaught of exile and assimilation. Those who have challenged the position of the "Rabbis" have faded into the tapestry of humanity and have been tragically lost to our nation.

The system of Torah She'Baal Peh, the Oral Law or Oral Transmission, has been the "Rabbis" primary responsibility. As a system, it has clear limitations. The human factor and the possibility of error is extremely high, yet the system has maintained itself in almost miraculous fashion for more than 3,000 years. Way before the invention of the printing press or other forms of mass record and communication, the Rabbis nurtured the legacy of Moshe's teachings through centuries of exile and persecution. The minds and hearts of the Rabbis treasured the encyclopedic tradition of Moshe's words with integrity and authenticity. They became living repositories of G-d's true intention.

When it finally became imperative for the Oral Transmission to be recorded in the form of the Mishnah and the Talmud, the Rabbis did so with meticulous attention to all the different opinions and schools of thought - many of them contradictory or opposing. That is why the Talmud appears to the casual reader as a record of Halachic (legal) arguments, interpretive challenges, and hair-splitting nuances. Yet, the final distillation of the opposing opinions and records is an almost uniform code of behavior that integrates the word of G-d into the ever-changing landscape of the human experience.

Considering the incalculable importance of the Oral Transmission, why didn't G-d insist that Moshe's record His teachings for posterity in writing, and avoid the inevitable mistakes and omissions that have occurred over the many years? (I've always imagined G-d (as the Teacher) turning to Moshe (as the Student) on the first day of his 40 day seminar on Mt. Sinai, and incredulously asking, "What! You didn't bring pencil and paper"?)

The reason why the Oral Transmission was oral, rather than written, is obvious to anyone who is sensitive to our basic emotional and psychological makeup. Humans crave control. Humans do not want to be told what to do or when to do it. Human would much prefer to make up the rules of morality, ethics, and religion, as dictated by time, circumstance, or fancy. Therefore, we seek out any

opportunity to reclaim a modicum of control over our lives and destinies. Key to that control is assuming the right to interpret G-d's words and intentions. Therefore, there have always been those who have opposed a mandated, uniform, tradition based on the teachings of the Rabbis.

If you think about it, it's actually quite amazing. The majority of the Judeo-Christian-Moslem world accepts the divinity, or at least the historicity, of the Written Law - the Chumash. The challenges have only been to the Oral Transmission - the Talmud. Why? Because a written record, even if it is divine, is contained and circumscribed. Its recorded "words" are open to individual interpretation and bias. An oral transmission on the other hand, is dependent on the direct teachings and explanations of a teacher. As such, it leaves far less room for interpretive consideration. One might argue the application of specific criteria or approach, but the bottom line, the Law, must follow the tradition, or be branded as heresy.

Consider what would have been if the Oral Tradition had been a written record. The written form would have established the clear intentions of G-d's laws, and it too would have become a limited and circumscribed text subject to the circumstantial interpretation of human need and desire. Any new situation that would ever develop would have been subject to intense debate and challenge, with each party claiming to know the true meaning, intent, and application of G-d's recorded word.

In fact, an elaborate divinely authored explanation of the Torah would have created far more conflicts than its oral tradition. Nowadays, it is clear that true Torah scholarship is a product of a system that demands constant study and interaction between teachers and students. As an oral tradition it is not just a published legal constitution that is available for anyone who can read and then assume an air of expertise. To understand the Oral Tradition, the true meaning of G-d's words, one must be taught. To teach the Oral Tradition, the true meaning of G-d's words, one must have been taught.

Book knowledge alone is almost worthless. To be valuable it must be a learning experience that integrates the knowledge of G-d's exact command with the realities and nuances of life. Such a system can only be taught through direct interaction between teacher and student. The oral tradition demands true scholarship and expertise that can only be earned through intense study, training, and commitment. It is not just another degree. However, if the Oral Tradition would have been a written tradition, the need for teachers would have never been realized and individual students of the text would have assumed the right of interpreting G-d's commandments to the limits of their own human shortcomings and bias.

The Parsha began by emphasizing the importance of true justice. "You must pursue righteousness." The mandate of righteous justice can only be generated by an orally transmitted legal system. Take the present status of America's legal institution. The worst types of criminals are let off because of "legal technicalities." The pursuit of societal safety by law enforcement agencies is hindered by over zealousness in protecting the "rights of criminals." Constitutionally mandated rights, as important as

they truly are, are applied in contradiction with simple and obvious common sense. (e.g. freedom of speech). In 1977 a federal judge in Texas ruled that a public school could not prohibit the students from wearing a clearly recognizable piece of gang-related paraphernalia because of the First Amendment. (Anyone thinking Columbine?) Could that have been the true intention of our Founding Fathers? Was it their intention to allow Nazi's to march through the survivor community in Skokie, Illinois brandishing hateful symbols and slogans? (Anyone thinking Granada Hills?) The problem is that we do not have an oral tradition that explains the true intentions and limits of what was certainly a divinely inspired constitution. Instead, time, circumstance, well-intended bias, and assumed understanding have dictated the interpretation and application of our constitution. Is it the truth, or is it personal fancy? We will never really know.

The meaning of "You must pursue righteousness" is, pursue a justice that is also righteous. Righteousness assumes a comprehensive understanding of all concerns and consequences. Such justice can only come from a cherished and protected oral tradition that has transmitted the true intention and meaning of G-d's words from generation to generation.

Good Shabbos.

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