

Letter of the Law vs. Spirit of the Law

by Rabbi Aharon Lopiansky

c. 1950

Innovative Rabbi: *It is important to permit and even encourage Jews to drive to shul on Shabbos. With the proliferation of suburbs and the car culture, this is the only way that we will have viable Jewish communities.*

Traditional Rabbi: *But the Shulchan Aruch strictly prohibits it. It is black on white; no ifs, ands or buts!*

Innovative Rabbi: *That's the problem with you. You are so fixated on the letters and details of the law that you have no sense of the spirit of the Torah. You fail to see the forest, because you're holding up a magnifying glass to each piece of bark on each tree!*

Don't you realize that the Torah's overarching description of the holidays is "Mikro'ey Kodesh"—"The convocation of the community in sanctity?" Don't

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LETTER OF THE LAW VS. SPIRIT OF THE LAW

*you realize that travel in the old times **disintegrated** communities, while today it **forms** communities?”*

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c. 2015

Innovative Rabbi: *Boruch Hashem, we are on the verge of solving the shem-iras Shabbos problem. We have installed artificial turf on the ball field, an eyruv techumin between the stadium and the town, geramah turnstiles, and Google driverless cars with a Shabbos mode to ferry everyone to the stadium. In addition, there will also be a lavish Kiddush after the game.*

Traditional Rabbi: *Something about it doesn't feel right.*

Innovative Rabbi: *I am a “Shulchan Aruch Jew”! Feelings, shmeelings! By what authority are you contravening a clear Shulchan Aruch? That is the problem with you so-called “Traditional Rabbonim;” we keep Shulchan Aruch; you innovate prohibitions!*

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Mr. Sharp: *I feel bad for Yankel.*

Mr. Tamim: *What happened?*

Mr. Sharp: *I borrowed a very expensive camera from him, and it was unfortunately stolen from me. What a pity!*

Mr. Tamim: *But aren't you liable as the borrower?*

Mr. Sharp *(with a glint in his eye): I didn't sit in yeshiva for nothing. Unbeknownst to Yankel, I asked him to bring me a glass of water as I was borrowing the camera. The poor fool didn't realize that he was becoming “be'alav imo,”¹ and I would not be obligated to repay the camera!*

Mr. Tamim: *It doesn't sound right to me.*

Mr. Sharp: *That's because you're an am ha'aretz and a bleeding-heart liberal to boot. I know the Halacha down to the last letter!*

¹ Shemos 22:14. If the lender is doing work for the borrower at the moment of the lending, the borrower does not have to pay for any loss.

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***Non-Jewish work colleague:** I don't get you Orthodox Jews. You seem so meticulous about the law, yet never fail to find loopholes. You string up an "eyruv" thing, you sell your bread for Passover, and a five-minute Gemara prayer allows you to eat meat in the Nine Days.*

***Jewish colleague:** Well, we follow the law to the letter!*

***Non-Jewish colleague:** But what does God want from you? Why play games with Him? Is the law only "letters?" Does it not possess a spirit?*

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The common thread of all these stories is the tension between the "letter of the law" and the "spirit of the law." The reader, depending on his leanings, may have sympathized with one or the other of the protagonists. But these sympathies are most likely based on intuition. However, decisions cannot be made on intuition. If we are to determine, in other situations, whether to follow the letter of the law or its spirit, it is first necessary to clearly define their respective roles.

Consequently, the purpose of this article is: a) to attempt to define the Torah position on the spirit of the law—if it exists; b) to define the latter's relationship to the letter of the law; c) to arrive at a resolution of cases where there is a conflict between the spirit and the letter of the law; and d) to determine who is the arbiter of the spirit of the law.

Sources

Let us identify the primary sources that formulate the idea of the spirit of the law:

The Torah commands: "You shall make yourselves holy ..."² On this *pasuk*, the Ramban comments:

The point of this Mitzva is: The Torah prohibits illicit sexual relations and eating non-kosher foods, while allowing marital relations, free consumption of (kosher) meat and wine, and any speech which is not specifically

2 *VaYikro* 19:2.

forbidden (such as *loshon hora*). A lust-ridden individual may decide to use this permission as an excuse to indulge excessively in his wife (or wives), to gorge himself with meat and wine, and to speak vulgarly—all of which the Torah does not specifically forbid. Thus, that person would be permitted to turn himself into a Torah-sanctioned lout!

Because of this, the Torah, after spelling out the details of prohibited sexual relations, tells us in a general sense, “Be holy”—diminish the degree of your indulgences. ... This, in fact, is the method of the Torah in other places: to enumerate the prohibitions and then to instruct us in general terms about other cases not specifically forbidden. Thus, after all business laws have been enumerated, including the prohibitions against stealing and cheating, etc., the Torah states a general injunction, וְעָשִׂיתָ הַיָּשָׁר וְהַטוֹב—“You shall do that which is right and good.”³ This is a positive commandment to act with integrity and justice beyond the strict law, in order to generate good will between people and to be pleasing to others. So, too, regarding Shabbos, there is a prohibition against specific types of labor, and a general, positive command of *tishbesu*, which forbids unnecessary toil.⁴

Similarly, on the *posuk*, יוֹם שְׁבִתוֹן—“A day of cessation of work”⁵—the Ramban comments:

... I think that this Midrash teaches us that the Torah bids us to refrain on *Yom Tov* even from things that are not [technically] considered prohibited tasks, so that we do not spend the day measuring grain, weighing produce, filling barrels of wine and moving rocks from house to house ...⁶

And he makes a similar comment on the command, וְעָשִׂיתָ הַיָּשָׁר וְהַטוֹב—“And you shall do the right and good in God’s eyes:”⁷

... our Rabbis have a beautiful Midrash regarding this. They said that this alludes to compromising and going beyond the letter of the law. Meaning

3 *Devorim* 6:18.

4 Ramban, Commentary to the Torah, *ibid.*

5 *VaYikro*, 23:24.

6 Ramban, Commentary to the Torah, *ibid.*

7 *Devorim* 6:18.

thus: First, I have instructed you to keep all the laws that I have commanded you, and now I am telling you that even with regard to that which I have not spelled out, keep in mind that you ought to do the “good and righteous,” for He loves the good and the righteous.

This is a very important point. For it is impossible to mention in the Torah all of man’s interactions with his neighbors and friends ...⁸

In these commentaries, the Ramban is laying out for us a multi-dimensional view of the world of Mitzvos. The world of Mitzvos consists of both specific prohibitions and general concepts. The specific prohibitions we shall call the “letter of the law,” while the general, more sweeping injunctions are the “spirit of the law.” By this analysis, the spirit of the law is mandated, although not through specific commandments.

The first one to actually describe the term “spirit of the the law” is perhaps R. Shimshon Rafael Hirsch. He explains the Mitzva of *ועשית הישר והטוב*,⁹ mentioned above, as meaning:

to act in acceptance of the spirit of the law, such as not exercising a legal advantage which brings us small gain while forgoing a privilege which will bring to our fellow man a great advantage, such as the law of *bar metzra* [selling land preferentially to a neighboring landowner].

Though the Talmud does not articulate this concept as clearly as the Ramban does, it is evident from the following case that this type of conduct is obligatory:

Rabba bar bar Chana hired porters who broke his barrel of wine. He seized their coats [as payment for the barrels]. They complained to Rav. Rav told him to return their coats. Rabba bar bar Chana asked, “Is that the law?” He replied, “Yes, for it says, “You shall go on the road of goodness.”¹⁰ He returned their coats.

They then persisted, “We are poor and worked all day and are hungry and we have nothing.” Rabbi told Rabba bar bar Chana, “Give them their

⁸ Ramban, Commentary to the Torah, *ibid.*

⁹ *Devorim* 6:18.

¹⁰ *Mishley* 2:20.

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wages.” He asked, “Is that the law?” He answered, “Yes, as it says, ‘You shall keep the ways of the righteous.’”¹¹

This ruling is actually cited in Halacha as appropriate, though not obligatory, behavior.¹² There is also a position in the *poskim* that the Beys Din can force a person to act *lifnim mi-shuras ha-din*—beyond the letter of the law;¹³ accordingly, it is obligatory.

It is, however, the *Shelah* who, I feel, gives this Halacha the most defined and clear explanation of why it is obligatory. He speaks about the obligation to be *kedoshim* (holy) and after describing the obligation in a way similar to the above-cited Ramban, continues as follows:

The person hearing this description may be thinking that this is some sort of piety, i.e., beyond obligation. But the truth is that it is an absolute obligation. However, the Torah could not be specific about it, considering how people and their natures differ from one another.

Similarly, when the Talmud states that a distinguished individual has greater obligations, this means that he is obligated to do so. Indeed, if everyone were exactly alike, this would have been stated as an unequivocal obligation. Thus, these and similar cases are called “beyond the letter of the law” and yet are absolutely obligatory on people like him.¹⁴

The *Shelah* thus defines this realm of Mitzva observance as obligatory, despite the fact that there does not exist a detailed set of rules for it. He also states that the level of obligation is commensurate with one’s stature in the community.

Similarly, the Rambam lists a set of laws whose level of obligation depends upon the spiritual stature of the person involved. That there can be a shifting obligation is understandable only if these *halachos* are guided by the spirit of the law. Thus, in *Hilchos Deyos*, he lists a set of *midos* (character traits) appropriate for every person, and then a set of more demanding *midos* incumbent upon a *talmid chochom* (Torah scholar) who is obligated to develop a more refined character. Regarding pure halachic practice, there are never distinctions

¹¹ *Ibid.*; *Bava Metzi’a* 83a.

¹² *Beys Yosef*, *Choshen Mishpat*, 304.

¹³ Bach, *Choshen Mishpat*, 12.

¹⁴ *Shelah*, *Asarah Ma’amoros*, *Ma’amar haShevi’i*.

made among people of different levels of scholarship or spirituality; but with respect to the spirit of Torah, of which good *midos* are an expression, each person is obligated in accordance with the degree to which he is capable.

But everyone—not just Torah scholars—is obligated in the spirit of the Torah to the extent that he is able. The Talmud tells us that Jerusalem was destroyed because its inhabitants followed the law,¹⁵ which is explained as follows: They kept the strict letter of the law without going beyond it in keeping with the spirit of the law, referring to their Mitzva obligations as well as to their monetary affairs.¹⁶

The notion of the spirit of the law is also the idea behind the midrashic interpretation¹⁷ of the sin of the Generation of the Flood, described in the Torah as being a generation “filled with plunder.”¹⁸ That generation based themselves on the ruling that someone who steals less than a *perutah’s* worth is not liable to return the theft. Accordingly, they would steal less than a *perutah’s* worth at a time until they accumulated a large sum of money, so that they would not have to return the theft. Now, the letter of the law determines that there is a minimum amount for liability for theft so that if someone steals a trifle, he is not liable to return it. However, if someone makes this type of theft his *modus operandi*, he has violated the spirit of the law. A generation that behaves this way is considered a generation which is “filled with plunder,” and its members are more morally bankrupt than ordinary thieves.

The Relationship

What is the relationship between these two aspects of Torah law? Which is more important? And why were they split up into two separate dimensions?

Let us draw an analogy of the relationship between the two dimensions of law that is not only illustrative but in some ways the root of the bifurcation.

¹⁵ *Bava Metzi’a* 30b.

¹⁶ *Pele Yo’etz* (chap. on *Yashrus*) writes accordingly that if A agreed to watch B’s object and it was lost or stolen, even though technically A is liable, B should not demand payment from him, for, since A was doing B a favor, it is not proper to ask him to pay.

¹⁷ *Bereyshit Rabba* 31:5.

¹⁸ *Bereyshit* 6:11.

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The only true worldly spiritual unit is Man—the human being. All physical entities other than Man are not spiritual, while angels, although spiritual, are not of this world. Man is an organism consisting of a soul ensconced in a body. Take away the body or any vital component thereof and we have no Man. In the same manner, take away his soul, and we have no Man. Both together, and only together, are defined as a human being.

Thus, the question of “which is more important—man’s body or his soul?” is moot. But there are some differences between them:

1. *HKBH* first created the body and then the soul.
2. The body has clearly defined vital units which form a minimal requirement for the existence of a human being. The soul does not have an easily defined “minimum;” it is amorphous.
3. The Torah made the survival of the body of primary importance (except for the three cardinal sins), and therefore *pikuach nefesh* (the saving of a life) overrides all other considerations.

These differences between body and soul are not dissimilar from the realm of Mitzvos. There is a “body” of a Mitzva and there is the “spirit” of a Mitzva. The “body” of the Mitzva is of primary importance; without it, there can be no Mitzva. But once the “body” of the Mitzva has been put into place, its true purpose is the “spirit” of the Mitzva, whether it is the *kedushah* (holiness) of sexual restraint, the *tov ve-yashar* (the good and the right) of monetary laws, or the *menuchah* (rest) of Shabbos.

Another analogy to the body and spirit of a Mitzva is the relationship between a vessel and its contents. If a person is thirsty, he needs, in addition to water, a vessel in which to hold it. If the vessel is cracked, the liquid will spill out; if it is whole, but without liquid, then there is no point in having the vessel.

Maintaining the balance between the body and the soul of Mitzvos is not easy. During different times in history, each was given different emphasis. Both the movements of *Chassidus* and *Musar* of the 18th and 19th centuries decried performing Mitzvos by rote (*Mitzvos anashim melumada*). Both described Mitzvos performed in this manner as “a body without a soul.”¹⁹ It is obvious that the generations in which these movements were founded were consid-

19 See *Pele Yo’etz*, Chap. *Ta’am*, as well as *No’am Elimelech to Balak*, and others.

ered deficient by being more meticulous about the "body" of the Mitzvos than about their "soul."

But, at some point, there was a reversal of emphasis. The *Nefesh haChaim*, representing the anti-Chassidic viewpoint, constantly emphasizes the primary necessity of performing the act of the Mitzva exactly as mandated.²⁰ He emphasizes that while the spirit of the Mitzva is indeed highly important and has sublime ramifications, any failure to keep even one element of the letter of the law renders the Mitzva worthless. He describes many examples, the most salient of which is *davening* after its prescribed time.

Similarly, the Chazon Ish, corrects what he sees as a common fault of advocates of the *Musar* movement who stress the spirit of the law, especially in interpersonal Mitzvos. He gives as an example the laws of *hasagas gevul*—encroaching on another's livelihood—where following one's intuitive feelings might lead to a wrong ruling. Emotionally overcharged individuals will often vigorously advocate one side of a controversy which is actually totally wrong from the perspective of Halacha and, thereby, become the self-righteous accomplices to wrongdoing.²¹

Looking at both sides of the issue of whether to give dominance to the body of the law or to its spirit, one comes to the conclusion that there is no real dispute between the two approaches, neither in principle nor even in application. Rather, the issue is based on differing assessments of the ultimate source of the spiritual failing of the time. The Chassidim/*Ba'aley Musar* saw the main problem as the rote and mechanical performance of Mitzvos, whereas their opponents saw the lack of fidelity to Halacha as the greater problem.

A Rebbi of mine, HaGaon R. Chaim Kamil, *zatzal*, once made the following observation: *Klal Yisroel* tends to swing back and forth in its biases as exemplified by the following phenomenon in the non-Chasidic world. One hundred and fifty years ago, meticulous Mitzva observance was emphasized to the detriment of the spirit of the law. The Creator then gave that world the *Ba'aley Musar* to swing the pendulum back to emphasis on inspiration and the spirit of the law. When the pendulum swung too far, He then sent them the Brisker Rav and Chazon Ish to turn them towards the other direction.

²⁰ See especially *Nefesh haChaim*, 1:22.

²¹ Chazon Ish (R. Avrohom Yeshaya Karelitz), *Emunah uVitachon* (Sifriati, 5757), chap. 3:1.

Determination

How do we determine the spirit of the law? Certainly, someone who never attends a *siyum* celebration except for the Nine Days when a restaurant hires someone to perform a perfunctory *siyum* so that its customers can dine on meat, is violating the spirit of the law of the Nine Days—which is mourning the destruction of the Temple. But why is someone who happens to complete a tractate in the Nine Days permitted to eat meat? Why is permission to carry on Shabbos granted by an *eyruv*? And why is possession of *chametz* which has been sold to a non-Jew acceptable? Why are these not contrary to the “spirit of the Torah?”

If one completes a tractate during the Nine Days, the obligation to celebrate the occasion overrides the obligation to mourn over the Temple. The spirit of the law is overridden by the spirit of another law. Regarding the *eyruv* which permits carrying on Shabbos: If the point of Shabbos was to not exert oneself by carrying objects from one domain to another, then the accusation that the *eyruv* violates the spirit of the law would stand. However, where the prohibition makes no reference to exertion but to the halachic category of “transfer of property between domains,” which is a Shabbos labor without any rational, social or moral explanation, one keeps within the spirit of the law by making an *eyruv*. Similarly, possession of *chametz* is forbidden only for one’s own *chametz*; if it is sold to a non-Jew, there is no prohibition. Possession of *chametz* is not a “moral” law. In these cases, the letter of the law is the total embodiment of its spirit.

However, when we encounter *halachos* that have a clear moral backdrop, such as *halachos* involving sexual restraint or interpersonal integrity, the letter of the law is but the vessel to contain the “spirit of the law,” of which the Ramban, cited above, speaks.

The Evaluators

Who can determine what this elusive “spirit of the Torah” is?

Let us use an illustration from common human interactions. Let us imagine someone seeking to buy a present for another and finding it necessary to consult someone else to determine what present the prospective recipient would most appreciate.

The consultant must possess the following qualities before he can be trusted to give advice on this matter:

1. He must have had enough previous interaction with the prospective recipient to enable him to determine his preferences.
2. He must possess the ability to understand the mindset of others.
3. He must have the integrity to give advice without being swayed by any vested interest (e.g., he cannot be a storekeeper interested in selling a particular object).

In the same manner, determining the spirit of the law can be done only by someone who has all these qualities. These qualities, when they affect giving advice in matters of Torah, are included under the rubric of *da'as Torah*. Where a purely technical halachic question arises, anyone able to refer to the correct sources might conceivably give a correct answer. But if the issue refers to the “spirit of the law,” then it is necessary to have someone who possesses *da'as Torah* determine what is proper.

Like the above consultant, such a person must possess the following qualities which define a person who possesses *da'as Torah*:

1. He knows enough Torah to have sufficient points of reference in making his decision. Someone who attempts to determine the spirit of the law without being well-versed in Torah law falls under the category of *ve-lo am ha'aretz chassid*—“An ignoramus cannot be a pietist.”²² Sometimes the spirit of the law may *appear* to be one thing to an unlearned individual, while in reality it is something else. Only when one has studied a vast array of *halachos*, and has reached the level of *meyvin davar mi-toch davar*—the ability to extrapolate one law from another—only then can one abstract from any law its spirit and apply it to other situations.
2. He must possess an intuitive ability to recognize the divine patterns of Halacha.
3. He must have no desire for honor, recognition or ease of lifestyle that might affect his decision.

Conceivably, there may be many valid and diverging determinations of the spirit of the law, and all can be equally valid. Thus, various groups celebrate

²² *Avos* 2:5.

mine the level of general spirituality most suited to a particular community before ruling on the spirit of the Torah, in order to bring out the maximum *ruchniyus* for that community without encouraging behaviors which might become a *gezeyrah she-eyn rov ha-tzibbur yecholim la'amod bo*—“an enactment by which most of the community cannot abide.”²⁵

Summation

Many of the current religious issues that face *klal Yisroel* such as children-at-risk, priorities in education, and forms of Orthodoxy are based in the evaluation of the spirit of the Torah versus the body (or Mitzvos) of the Torah. For instance, many (though not all) changes in the role of women may technically be halachically permissible, but if one views the corpus of *halachos* describing a woman's religious roles and draws from them an honest conclusion, we would arrive at different rulings than those advocated by most feminist groups.

To sum up: There are two dimensions to Torah law—its letter and its spirit. The letter of the law is specific and exacting; it cannot be overridden (except where Halacha itself allows this). But once fulfilled, it is seen as a mere vessel for holding the endless and infinite spirit of the law. This spirit must be abstracted from the entirety of Torah by a person who has the knowledge, ability and integrity needed to make such abstractions. Violating the letter of the law leaves us with the equivalent of a cracked vessel incapable of holding water to drink. Keeping only the letter of the law without investing it with spiritual content is like having a perfect vessel with nothing in it to quench our thirst. There is little practical difference between the two; neither serves the purpose of the Torah. Only when we have a sturdy vessel and then fill it with water does the water become life-sustaining.

25 *Avodah Zarah* 36a.