

Aish Dat: A Brief History of the Development of Halacha According to Rabbi Naftali Tzvi Yehudah Berlin (Netziv)

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Introduction: Aish and Dat

When our great leader and teacher, Moshe Rabbeinu, concluded the very last Parsha of the Torah, he describes the revelation of the word of God with two distinct characteristics. As the verse states "*Hashem came from Sinai and shone out from Seir, appeared from Mount Paran and came with myriad of Holy (ones), from his right, Aish (fire) Dat (statute/ law)*"¹. The written word itself attests to the closely bound relationship between these two aspects, Aish and Dat, where it is written as one word in the Torah, AishDat, however read as two distinct words. In fact Rashi² tells us that it is one of fifteen words that are written together, yet are read separately.

The fact that Moshe could encapsulate the entire transmission of Torah as defined in two words is astounding and puzzling. What is so significant about these two aspects of Torah and its transmission?

1 *Devarim* 33, 2: "ויאמר ה' מסיני בא וזרח משעיר למו הופיע מהר פארן ואתה מרבבת קדש מימינו" **אשה למו**

2 *Tehillim* 10, 10.

Aish Dat: A Brief History of the Development of Halacha

What is their explanation and how do they relate to each other and what role does it play in influencing human interaction with the content of revelation, Torah, and the legal process? These are some of the areas addressed by the Netziv as he traces the development of Halacha throughout the passage of time, from its formal inception and transmission from Moshe Rabbeinu. This enlightening and creative piece of work called *Kidmat Haemek* is the introduction to the Netziv's commentary on the Sheiltot of Achai Gaon, entitled *Haemek She'eila*. The Netziv highlights two fundamental aspects of Torah and attempts to follow the path of Torah, as it oscillates through time between these two critical elements.

The purpose of this paper is to outline this brief history as presented by the Netziv in order to gain insight into the development of Halacha, the nature of Halacha, and to encourage thought on the impact this history has on Torah study and the application of Halacha today. Furthermore, there are many other issues that will be raised throughout the paper, such as the origins of machlokes, Halacha as an objective reality or subjective reality, and the importance of a chain of tradition. Whilst it is my desire to explore these fascinating facets of research, it is not within the scope of this paper, which is intended as an introduction to a unique perspective on the history of the development of Halacha.

Moshe, Yehoshua and the Early Generations

The first aspect of Torah is that which is characterized as *Dat*, which simply means law or statute. This refers to the clear-cut legal rulings which inform people how to live according to the parameters of Jewish law and how to safeguard the divine commandments. The second aspect, *Aish*, fire, is possibly the polar opposite of *Dat*. Whereas *Dat* is clear-cut and confined to solid boundaries, *Aish* is as its name suggests - uncontainable and alive. This refers to the more concealed portion of Torah which is subject to critical analysis and

deep investigation, comparing and contrasting until the true nature is brought forth to light. The *Midrash*³ also describes the Torah as having several components. The first is one of absolute simplicity, where one does not require explanation how to use it. The second is slightly concealed, requiring a certain intellectual alacrity to reveal the content. The third is completely hidden and one is totally dependant upon the help and assistance of God to find it. The Ramban in his introduction to his commentary on the Torah also alludes to this hidden aspect of Torah where he comments that the entire Torah can also be understood as permutations of the divine name.⁴ This compounds further the aforementioned concept that the Torah is neither a simple instruction manual with clear directions for use, nor is it merely a boundless, wellspring of information hidden in the depths waiting to be brought out to light, rather it exists as an expression of both elements.

The creative nature of analysis and investigation which reveals new novella is comparable to the sparks of a flame that can separate from their source and create a greater torch of light. In the same manner that a torch of fire has the ability to bring forth a new spark and when other materials are added to it which increases the flame, the brightness and strength of the torch increases, which in turn gives way to further sparks and flames, so too it was with the first *machloket* in the days of Yehoshua.

From the times of Yehoshua and onwards, many doubts arose and disagreements were aired regarding numerous laws⁵. Consequently, the leaders came together to resolve the matter and used majority rule to decide upon the legal outcome, according to the dictum *acharei rabim lebatot*. The death of Moshe heralded a new era of arriving at halachic decision, where it was no longer possible to directly receive

3 *Bereishit Rabbah* 1, 1

4 עוד יש בידינו קבלה של אמת כי כל התורה כולה שמותירו של הקב"ה

5 See *Temurah* 16a, Where the Talmud discusses the loss of knowledge and halacha with the death of Moshe Rabbeinu and the succession of Yehoshua.

Aish Dat: A Brief History of the Development of Halacha

the word of God with the same clarity that was exhibited during the life of Moshe. Torah had to be drawn forth and uncovered through intellectual toil and logic performed by the Sages and leaders of the generation. Despite the fact that the core of Halacha transmitted by Moshe was maintained with the same clarity and certainty, a new method, *Aish*, had to be utilized. This formed the basis and groundwork for the later generations. It became the backboard for which all future halachic decisions were to be measured against. This is known as *Halacha Brura*, clear cut Halacha, where *Dat* was made from *Aish*. In the following generation, those specific matters which had been previously resolved were no longer a cause for doubt or disagreement. When an additional factor to an earlier halachic matter arose there would be further discussion and debate in an attempt to bring forth a resolution, however the groundwork from the previous generation would not be altered. The work of the earlier generation became a root which stabilized later developments.

The concept of *hilcheta gemiri lehu* (הלכתא גמירי להו)⁶, which is mentioned throughout the Talmud, advances the notion of the organic and developmental nature of Halacha. The explanation of this phrase, which evokes an authoritative tone, is that the specific Halacha in question was transmitted from person to person until that generation when the matter was investigated and solidified. The word *gemiri* in this case is to be defined as decided upon and completed, where the transmission of material is clarified and fortified from generation to generation and eventually attains the status of being a root, typical of the aspect of Halacha described as *Dat*. This further emphasizes the critical role that rationale and human involvement has in the evolution of Jewish Law and life.

6 'קדמת העמק, אורח ג: The Netziv notes that there is an apparent disagreement over the definition and nature of הלכתא גמירי להו by Rashi and the Rambam. Rashi and Tosafot understand it to be synonymous with *halacha le-Moshe me--Sinai* and as such have little or no connection with human rationale. The opinion stated in the paper is the opposing view of the Rambam.

The impact and impression that the rulings of the earlier generations have upon their successors is expressed in Talmud and various Midrashim. The Talmud⁷ records that God showed Moses the halachic details and novella of the Soferim and the Midrash⁸ states that it was revealed to Moses that which Torah scholars would in the future come up with. Why would all these masses of details be shown to Moses, and what is their significance? The answer is that the Talmud and Midrash were not referring to every new novel idea of every single Torah scholar, rather what was referred to was those novella that would solidify certain halachic matters leaving no room for further creativity and change. The example that the Talmud provides, which fits the requirements of a newly created halacha set to stand firm and continue through following generations, is the reading of the Megillah. The creation of this type of law is another model of formulation and development of Halacha, where Halacha formed by creative innovation becomes the bedrock for future generations.

The Unique Legislative Qualities of the Tribe of Levi and Yehudah

Both the tribes of Yehudah and Levi, representing the monarchy and the priesthood respectively, are characterized as legal decisors, however their roles in the general process of generating Halacha differs greatly. The unique quality of Levi is the ability to rule according to the moment, dealing with the elements that are in front of their eyes; according to the dictum of our sages that a halachic

7 *Megillah* 19b: 'ואמר רבי חייא בר אבא אמר רבי יוחנן מאי דכתיב ועליהם ככל הדברים אשר דבר ה' עמכם בהר מלמד שהראהו הקדוש ברוך הוא למשה דקדוקי תורה ודקדוקי סופרים ומה שהסופרים עתידין לחדש ומאי ניהו מקרא מגילה

8 *Kobellet Rabbah* 1, 29: אמר ר' יהושע בן לוי עליהם ועליהם כל ככל דברים הדברים המצוה כל המצוה ללמדך שמקרא ומשנה הלכות תוספתות והגדות ומה שתלמיד ותיק עתיד להורות כבר היה וניתן הלכה למשה מסי

Aish Dat: A Brief History of the Development of Halacha

decisor should only rule based upon what their eyes see.⁹ Then with divine assistance they were able to generate the correct law; however their rulings would not be established for all future generations. It is this quality of instruction which is alluded to by Moshe in his blessing of Levi when he says “You will instruct the ordinances to Yaakov”.¹⁰ On the other hand the tribe of Yehudah was different; their unique ability was in the form of finding proofs and resolutions for legal difficulties through their intellectual investigation, until the point where the rulings would arrive in clear-cut form without any room for further doubt to arise. This characteristic also finds reference in a biblical source where the defining features of Yehudah is described as *mechokeik*, as it says in the verse, “the scepter shall not depart from Yehudah, nor a scholar (*mechokeik*) from among his descendants”.¹¹ The aptitude for probing in depth and excavating the source of wisdom and drawing out and refining the law is yet another element of *mechokeik*, which is embodied within Yehudah.

The characteristics of Yehudah and Levi do not cease with their existence, rather they continue within their offspring. This is strikingly apparent in the form of Betzalel and the Leviim. The construction of the *Mishkan* is inextricably linked with the learning of Torah, as our sages say; the making of the Aron causes the merit of Torah.¹² It should therefore be no surprise that the one who designed the Aron and the Mishkan with a divine inspired spirit and understanding, allowing for a new plain of experience with G-d was Betzalel from the tribe of Yehudah. Furthermore, after its inception, those who were responsible for maintaining the *Mishkan* and its

9 *Bava Batra* 131a, *Sanhedrin* 6b & *Nidah* 20b

10 *Devarim* 33, 10

11 *Bereishit* 49, 10. Rav Hirsch does not translate *mechokeik* as scholar, but rather the stylus the scholar uses for inscribing the law.

12 *Shemos Rabbah* 34, 2: א"ר יהודה ב"ר שלום א"ל הקב"ה יבאו הכל ויעסקו בארון כדי שיזכו כולם לתורה

contents, ensuring its existence and the constancy and continuity of the tradition, were the tribe of Levi.

Otniel ben Kenaz

Another prime example of a descendant of the tribe of Yehudah who displayed the characteristic qualities of delving the depths of wisdom and bringing to light the refined law, was Otniel ben Kenaz. The Talmud¹³ relates that during the mourning period for Moshe Rabbeinu masses of Halachot were forgotten - seventeen hundred in all! Rabbi Abahu continues that despite the fact that they were “lost”, Otniel ben Kenaz from Yehudah reinstated them with his *pilpul*. Through his *pilpul* he determined that the outcome he arrived at was the Halacha that was given. The fact that forgotten Halachot can be regained by intellectual investigation and analysis testifies to the strength and the significance of this method. One must question, however, the status of these Halachot in relation to the Halachot that were originally given: whether they have the same legal standing and whether it is something new or rather a discovery of the original, or whether fragments were actually lost despite the renewal.

Shaul HaMelech and David HaMelech

The Talmud¹⁴ differentiates between the influence of the Torah of Shaul HaMelech and David HaMelech. Shaul HaMelech did not institute halachot for future generations since he did not reveal his reasons for his halachic decisions, rather he ruled based upon his evaluation of the material presented to him. The outcome was that the rulings were suited for that specific time based upon those particular variables and were not intended for future application.

13 Temurah 16a: במתניתין תנא אלף ושבע מאות קלין וחמורין וגזירות שוות ודקדוקי סופרים נשתכחו בימי אבלו של משה אמר רבי אבהו אעפ"כ החזירן עתניאל בן קנז מתוך פלפולו

14 Eruvin 53a: דוד גלי מסכתא שאול לא גלי מסכתא דוד דגלי מסכתא

Aish Dat: A Brief History of the Development of Halacha

David, who was from Yehudah, worked out halachot in a manner characteristic of that approach, through investigation, discussion and debate, revealing the reasons and processes. As a result he merited that his decisions became entrenched within the corpus of legislature.

Shlomo HaMelech

The emergence of Shlomo HaMelech heralded a new era within the halachic process. Whereas the style of David HaMelech was, as we have mentioned, through discourse, investigation and debate, it was only upon those matters which were not clarified and established by the earlier generations. That which was established through consensus was not elucidated or explained. Shlomo HaMelech was of a different nature. It was not sufficient to merely uncover that which was not yet revealed, rather everything had to be understood, and therefore everything had to be uncovered and explained. In terms of practical application of Halacha it is necessary to follow the path of David HaMelech, however regarding the pursuit of knowledge and wisdom of the Word of God, which Torah is, it is essential to pursue the way of Shlomo HaMelech. Besides being a true sage, Shlomo HaMelech was an expert on the traditions and legal rulings of the previous generation, and it was with these armaments that he went out to battle in the war of Torah. Understanding the path with which the earlier sages came to conclude upon these laws was the primary aim of the wisest man who ever lived. This mission is perhaps best expressed in the dictum of our sages of blessed memory, “one should learn, then return and contemplate it”.¹⁵

15 *Shabbat* 63a: “דליגמר איניש והדר ליסבר”

Kohanim, Leviim and Yoshiyahu HaMelech

After the era of Shlomo HaMelech, during the time of the *Beit Hamikdash*, the legislative bodies were the Kohanim and Leviim, who, as we have explained, relied upon the heavenly light shining forth from the Holy Ark to guide the path of Torah. Their way was one of divine intuition and guidance, channeled through emissaries of light such as the Cohen Gadol. This is how the process continued until the reign of Yoshiyahu HaMelech. Yoshiyahu saw that the nation of Israel was soon to be exiled to a foreign land, unfamiliar with Torah. Furthermore, he understood that the inspiration required for the process of halachah came with divine assistance through the medium of the Holy Ark (Aron Hakodesh) and if the people were to be without the Holy Ark in the Holy of Holies, they would be without the necessary means to provide legal instruction. It was with this in mind that we are told in *Yoma*¹⁶ that Yoshiyahu HaMelech, in his great wisdom, commanded that the Holy Ark should be hidden. This was an essential step towards opening the path for creativity and investigation within Torah, and away from dependence upon divine inspiration in legal instruction. The decentralization of legal process allowed for the increase in the warriors of Torah, prepared for battle in a wilderness alien to Torah. In the footsteps of his grandfather came Yoachim and the members of the Great Assembly and instituted the instruction to “be discerning in judgment, establish many students and create a fence for the Torah”¹⁷, as a direct impetus to increase the creativity and investigation in Torah thought. This *pilpul* of Torah increased amongst the ranks of Israel, however it did not reach its full height and the nation of Israel were exiled from their land.

16 *Yoma* 53b, and see also *Yerushalmi Sotah* 7, 4.

17 *Pirkei Avot* 1: 1

Aish Dat: A Brief History of the Development of Halacha

The Babylonian Exile

The caution of Yoshiyahu had to be firmly upheld during their stay in Bavel. Their mission was to understand Torah and to rule based on their understanding and intellectual investigation, in a manner similar to that exhibited by Shlomo HaMelech. As they were in exile, the merit of the land of Israel was no longer providing them the merit to understand the law with little investigation. This relationship between Israel and Torah is verified in the Tannaic statement “there is no love like the love of Torah and no wisdom like the wisdom of the land of Israel”.¹⁸

R. Yirmiyah describes the method of learning in Bavel to the verse, “He has placed me in darkness”.¹⁹ The meaning of this verse and its relation to Bavel is to be understood that Bavel is a place void of the light of Torah, and only through the great torch of Torah encapsulated in the Babylonian Talmud can those depths of darkness be illuminated. The didactic style of the Babylonian Talmud compels one to search out and bring to the fore the depths of the Tannaic statements of the Mishna. Elaborate constructions of legal interpretation are raised and brought down, in contrast to the decisive, clear cut style of the Talmud Yerushalmi. Within this vein of thought we find similar depictions of the Babylonian style of learning. Rabbi Yochanan tells us that the reason for the name Bavel is because it describes its very nature, “mixed up in scripture, mishna and gemarah”.²⁰ Rabbi Yochanan is certainly not denigrating the Babylonian way; rather he is providing an insight to the Babylonian style, a style which the Kohellet Rabbah suggests is analogous to two people finding their way through a palace with many rooms and chambers, one with a candle and one without. Naturally the one who has a candle will be able to find his way through the palace swiftly

18 *Avot de-Rabbi Nattan*, Ch. 28

19 *Eicha* 3, 6: במחשכים הושיבני כמתי עולם

20 *Sanhedrin* 24a מאי בבל אמר רבי יוחנן בלולה במקרא בלולה במשנה בלולה בתלמוד במחשכים הושיבני כמתי עולם אמר רבי ירמיה זה תלמודה של בבל

and with ease. However, as a consequence of his experience, he will be no more the wiser regarding the configuration of the palace. The other, who has no candle, is forced to exert a greater amount of effort examining the various chambers and corridors and at times will err in his direction, until eventually he arrives at the opening. The outcome of a journey filled with contemplation and exertion of energy will undoubtedly give a clearer, more intimate understanding and knowledge of the ways of the palace. Whilst the Torah of the land of Israel may be analogous to one with a candle who is able to instantly attain a clear understanding, it is the toil and labor of the Babylonian style that will bring greater understanding and illumination of the path of Torah.

Ezra

When Ezra returned from Bavel to Israel, the need for *pilpul* dissipated, for they were once again privy to the inspiration and clarity of the land of Israel and the *Urim* and *Tumim* of the Cohen Gadol. The reliance upon the Cohen Gadol and the lack of intellectual activity resulted in a weakening of the skills and methods of investigation and analysis of Torah law. Furthermore, when the spiritual stature of the Jewish nation dropped to an extreme low during the second temple period and the Cohen Gadol was no longer fitting to receive divine inspiration, and thus their means of accessing Torah disappeared, the Torah almost vanished too. The period of *Dat* had ended and the methods of *Aish* were unavailable. The embers of Torah were rekindled by Hillel, who ascended from Bavel and reestablished the mantle of Torah which continued in the succeeding generations. They followed the path of Hillel and the creative methods of Bavel until the seven rules were instituted.²¹ This resulted in the clarification of many legal doubts and disputes from earlier times until their era, and ultimately this style lead to a

²¹ *Succah* 20a & *Tosefta Sanhedrin* 7, 5

Aish Dat: A Brief History of the Development of Halacha

paradigm change with the compilation and canonization of the Mishna by Rabbi Yehuda HaNassi. Despite the fact that Hillel established seven rules with which the Torah was to be expounded, the path of Torah of the land of Israel was maintained as distinct from the Babylonian path of Torah, as they both blazed trails of establishing clear cut legal rulings and the constant sculpting of legal processes respectively.

The Sages of Israel and the Sages of Bavel

The relationship between the Sages of Israel and the Sages of Bavel was one in which each relied upon the other's strengths. The Babylonian sages recognized the shortcomings of their methods of inquiry, which although they did bring clarity to otherwise cloudy areas of law, they did not match the clarity of the legal rulings of the Sages of Israel received by unbroken transmission. On the other hand, the Sages of Israel recognized the limitations of their inheritance. Within areas where no tradition had been maintained, the only course of action was to utilize the methods of their Babylonian counterparts who were expert at bringing light to darkness. The Talmud acknowledges the value of both of these paths of Torah as it states that one sage of Israel that goes to Bavel is considered like two Babylonian sages²² and elsewhere states that one sage of Bavel that goes to Israel is equal to two Jerusalem sages.²³

The Babylonian Talmud and the Gaonim

The completion of the Babylonian Talmud created a magnificent palace filled with chambers of knowledge awaiting investigation and exploration. A template of the Babylonian style was produced, which encapsulated the creative process of reaching halachic decision and

²² *Menachot* 42a

²³ *Ketubot* 75a

interpretation. The Gaonim were very accustomed to the pathways of the Talmud and its rulings, and as such became reliant upon its clear presentation of statutes. Coupled with decrees of annihilation and persecution, they were not able to establish an extensive and strong chain of transmission in the form of students or literature and thus the creative flame of Torah lessened.

The French Scholars

Following the relative lull of the “fire” of Torah during the Gaonic period, the path of Torah was set to be subject to the methods of inquiry and investigation in order to sharpen the sword of Torah and to increase its splendor. The path led towards France, a land which had not experienced the direct transmission of the tradition. The task of the French scholars was to find an entrance to the “palace” through inquiry, investigation and exploration.

The Talmud in *Shabbat*²⁴ describes the nature of the development of halachic rulings by our Sages as a famine and the subsequent thirst and hunger for food, or in the analogy, the word of God. The Sages tell us that in the future the Torah will be forgotten, as it says in the verse “Behold the days are coming...and I will send a famine in the land, not a hunger of bread, nor a thirst for water, rather to hear the word of God”. The famine is equivalent to the state which was experienced in the period of Yoshiyahu HaMelech, as well as during the times of Hillel with his seven rules. The famine is the over reliance upon set law and statute, *Dat*, which leads to a dulling of the flame of Torah. The flame of Torah increases when there is a hunger and thirst to reveal its infinite wisdom, yet this can only be achieved

24 *Shabbat* 138b: תנו רבנן כשנכנסו רבותינו לחרם ביבנה אמרו עתידה תורה שתשתכח מישראל: שנאמר הנה ימים באים נאם ה' אלהים והשלחתי רעב בארץ לא רעב ללחם ולא צמא למים כי אם לשמוע את דברי ה' וכתוב ונעו מים עד ים ומצפון ועד מזרח ישוטטו לבקש את דבר ה' ולא ימצאו דבר ה' זו 'הלכה דבר ה' זה הקץ דבר ה' זו נבואה ומאי ישוטטו לבקש את דבר ה'

Aish Dat: A Brief History of the Development of Halacha

when there is a famine looming, threatening the levels of comfort and satiation of the populace. This was evident in the era immediately following Yoshiyahu HaMelech, as was previously mentioned, and the appearance of the seven principles of Hillel and the Mishna, which was followed with the tireless efforts of the Amoraim and their interpretation of the Mishna. The cyclical pattern now demanded that the dark ages of the Gaonic era be illuminated by the creative spark of the French scholars.

The Distinction between the Later Generations and the Earlier Generations

Shlomo HaMelech, with his prophetic insight, cautions the future generations not to mock the inheritance of the early sages who received their portion in Torah predominantly through a chain of transmission, rather than with wisdom alone.²⁵ He states that greater is Torah and instruction of its ways as was received by the earlier generations than the renewal of the laws through intellectual investigation. Nevertheless, the possession of both aspects is certainly superior, as was exhibited by Shlomo HaMelech.

The Rishonim and their Relationship with the Gaonim

In the same manner that the Sages of Israel and Bavel valued and respected each other's style, so too the Baalei HaTosafot recognized the superiority of the Gaonim and the strength of their received tradition. Nevertheless, the Baalei HaTosafot were accustomed to utilizing tools of investigation to uncover the law and as a result they were not as determined to pore over every detail of the Gaonic rulings. They relied upon their wisdom and intellectual alacrity to aid them in reaching the truth of the tradition as was encapsulated in the

²⁵ *Kobellet* 7, 10-12:

Talmud. Inconsistencies in Gaonic rulings were pushed aside for their interpretation of the law.²⁶

The Ramban, however, gave of himself and toiled to resolve the works of the Gaonim. Nevertheless, when he found inconsistency and ambiguity in the words of the Gaonim, his own legal interpretation and ruling would override theirs.

With the emergence of the Rambam, the world of Torah witnessed a return to the path of the previous generation. The tradition of the Gaonim and their transcripts were handed over by his teachers, his father Rabbi Maimon, and the Ri' Migash. He sifted through their works word for word in order to understand the tradition of his predecessors with accuracy and precision and to resolve any ambiguity. In the same manner that the knowledge of an accepted law (by tradition) will cause the sages of the Talmud to lean towards rulings of Baraitot on certain fine points over the ruling of the Mishna, so too can we say that the Rambam follows the tradition of the words of a certain Gaon even when it seems to contradict the main works of Achai Gaon, *Baal Halachot Gedolot*, and Rabbeinu Alfasi. Thus the way of the Rambam was to re-link the tradition of the Gaonim and their clear cut legal rulings to his current day, and it is perhaps no surprise that his works are renowned for their clarity and simplicity.

The French Scholars had no direct link with the tradition, and so utilized their skills of *Aish*. The Rambam had the tradition of the Gaonim and therefore labored to reestablish *Dat*. In whose footsteps would the later generations follow?

²⁶ לקדמת העמק, אות טו 26: See here regarding the rulings of Rabbeinu Tam over Rav Hai Gaon.

Aish Dat: A Brief History of the Development of Halacha

The Acharonim

Whilst the Acharonim did focus on the works of the Rambam in an attempt to understand the variances between the Rambam and the commentaries of Rashi and the Baalei Tosafot, they did not however place their attention on the works of the Gaonim. The lack of a comprehensive study of Gaonic literature can be attributed to the fact that their primary focus was the investigation and interpretation of the abundant works of the Rishonim, leaving them with little time to explore the Gaonim. Furthermore, as the printing press had not yet become widespread, copies of the texts were limited, which resulted in the increased study of literature that was available, the works of the Rishonim.

Using the above outline of the development of the oral tradition as a backdrop, the Netziv provides his justification for focusing on the works of the Gaonim and not focusing primarily on the works of the early Acharonim and Rishonim. Perhaps serving as a link in the chain of the pure tradition, or perhaps drawn by the beauty and luminance of experiencing the source of wisdom of the earlier sages.

Conclusion

We have traced the development of halacha and have identified two fundamental components characterized as *Aish* and *Dat*. *Aish* refers to the fiery, creative aspect of Torah which finds expression in *pilpul* and *chakirah*, the thorough intellectual investigation, exploration, analysis, discussion and debate, innovating new pathways of halacha without complete dependency upon transmitted halacha. *Dat* is the clear-cut style of arriving at legal decisions, which does not strive to innovate Halachot, rather it relies heavily upon the transmission of Halacha and the tradition. This approach looks towards the previous generations as the source for the formulation of their halachic decisions. *Aish* and *Dat* have an interactive dynamic where the existence of one precipitates the onset of the other. This was

apparent with the loss of Halachot and the clear instruction after the death of Moshe Rabbeinu and the consequent renewal of the Halachot through the *pilpul* of Otniel ben Kenaz. Thereafter the oscillation between *Aish* and *Dat* continues with Betzalel and the Leviim, Shaul HaMelech and David HaMelech, the Babylonian sages and the Sages of Israel, the Babylonian Talmud and the Jerusalem Talmud, the Gaonim and the Rishonim (predominantly the French scholars), and the Acharonim. Both of these methods are vital for the continuity of the legal process, constantly demanding that neither one of these methods are forgotten and thus ensuring its preservation.

The approach of the Netziv treads a delicate path between validating the creative ingredient of formulating Halacha on the one hand, and justifying the need to explore and discover the accurate transmission of the previous generations on the other. Perhaps it is this path that history has shown us to be the most desirable, as is evident in the approach of Shlomo HaMelech. Perhaps, it is indicative of a Torah which was presented as *AishDat*, a combination of the two forces that demands the individual to emulate this balance of investigating a personal and subjective as well as a “divine” and objective halachic reality.



