

## LETTERS TO THE EDITOR

### Root Beliefs of Judaism

I AM GRATEFUL to R. Krakowski for his careful and friendly reading of many of my writings on the question of dogma in Judaism (*Hakirah*, vol. 20).

His article reminds me of an apocryphal story told about Franz Kafka. Checking into an inn, Kafka signed the guest register. The innkeeper, in great surprise, asked, “Are you Franz Kafka the author? I’ve bought all of your books.” To this Kafka replied, in amazement, “You’re the one!” I doubt that there is anyone in the world more familiar with my studies on dogma and religious belief than R. Krakowski. Given how long it has been since I have worked with these materials, I am sure he is a greater expert on them than I am.

That said, I cannot agree with the criticisms of my work in R. Krakowski’s learned article. I think that he may be missing the forest for the trees.

For the sake of avoiding argument, I am willing to grant his point about my translation of Rashbatz’s sentence (not that I actually think that R. Krakowski’s translation is correct and mine wrong). The real point at debate between us is as follows: Does pre-Maimonidean Judaism know of an understanding of religious belief the content of which consists of a series of positive statements? In my

various works I present arguments for the claim that Rav Sa’adia, Rabbenu Bahya ibn Pakuda, and especially Rambam share an unprecedented understanding of religious belief, an understanding that culminated in Rambam’s 13 principles. Figures like the Rashbatz were caught, as it were, between reverence for Rambam on the one hand, and their commitment to the traditional (pre-Maimonidean) understanding of the nature of religious belief on the other.

With respect to R. Judah Halevi, even if Rav Sheilat’s translation of the passage from *Kuzari* III.17 cited by R. Krakowski is correct (and it is far from clear that it is—the Arabic here is: תם יסרד תלך אלעקאיד אלחי בהא תהם). To my mind this is yet another example of Rav Sheilat trying to minimize the differences between Halvei and Rambam), the point that R. Krakowski seeks to derive from it ignores the context of III.17 (about the special nature of the Jewish people and their bearing the *amr al-ilabi*) and certainly ignores the context of the entire book. To impute to R. Judah Halevi the idea that Judaism has *ikkarei emunah* (as Rav Sheilat translates the *Kuzari* in III.17) is to contradict the frame story at the beginning of the book. There Halevi refuses the King’s invitation to do precisely what R. Krakowski finds him doing in

III.17: stating the dogmas at the heart of Judaism.

*Menachem Kellner*  
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*Eliyahu Krakowski responds:*

I would like to thank Professor Kellner for his kind words about my article (although we may disagree about the extent of the accomplishment he attributes to me). To briefly restate the core of our debate: I argued that Kellner mischaracterized the view of Rashbetz (and his school) about inadvertent heresy, based on a minor but significant mistranslation. Rashbetz's view is not that "inadvertent heresy" cannot make one a heretic, but rather that as long as one possesses the "root" beliefs of Judaism, an error regarding one of the "branches" does not make him a heretic. I noted that Kellner's view seems to have been based on a mistranslation of the following words (in *Ohev Mishpat* ch. 9):

מי שעלו בידו שורשי התורה כראוי,  
ועומק עיונו היטה אותו להאמין בסעיף  
אחד מסעיפי האמונה היפך ממה  
שהוסכם עליו שהוא הראוי להאמין...  
אע"פ שהוא טועה אינו כופר.

Kellner has consistently translated this as: "one who has properly accepted the roots of the Torah but was moved to deviate from *them*..." implying that Rashbetz's discussion is about one who has deviated from

the "root" beliefs. In fact, it is clear that Rashbetz is discussing one who has deviated from one of the "branches," but *not* from the roots.

Professor Kellner now argues that even if I am right, I am missing the forest for the trees. As an acknowledged expert in the writings of Menachem Kellner on dogma, I can attest that he has never before considered this to be an unimportant point. This is because, as I discussed in my article, this seemingly minor issue relates to how we define Judaism: Does adherence to the Jewish faith require acceptance of certain non-negotiable beliefs—such as belief in one God, in revelation, and in a final redemption—or is faith an attitude free of specific intellectual content? Kellner has repeatedly argued for the latter view, claiming Rashbetz for support; now that this support has been called into question, Kellner claims it wasn't essential all along.

Finally, with regard to R. Yehuda Halevi's *Kuzari*—Kellner accuses me of ignoring the context of the chapter I am quoting as well as the context of the entire book. Perhaps because of his long time away from these materials, Professor Kellner seems to have forgotten the content of the dialogue to which he refers. The "frame story" at the beginning of the *Kuzari* (I:11–27) is not about whether Judaism has dogmas, but about whether these dogmas can be expressed in abstract philosophical terms. The *haver* describes Jewish belief in terms of particular historical events and refuses

the king's request to express his beliefs in universal terms (I:11,25; Heinemann trans.):

I believe in the God of Abraham, Isaac and Israel, who led the Israelites out of Egypt with signs and miracles; who fed them in the desert and gave them the (Holy) Land...who sent Moses with His Law, and subsequently thousands of prophets, who confirmed His law by promises to those who observed and threats to the disobedient...

In the same way God commenced His speech to the assembled people of Israel: "I am the God whom you worship, who hath led you out of the land of Egypt"; He did not say "I am the Creator of the world and your Creator." In the same style I spoke to thee, O Prince of the Khazars, when thou didst ask me about my creed.

In other words, Halevi does not deny that Judaism is a religion containing dogmas, but he does deny that these dogmas are to be found in abstract philosophical principles. It is precisely for this reason that I cited Halevi's discussion in III:17—to demonstrate that even the anti-philosophy school represented by Halevi accepts that Judaism is a religion defined by specific beliefs, and that this is not a Maimonidean innovation. (For a good overview of the dispute between Rambam and Halevi about the merits of philosophy, see R. Sheilat's

*Bein ha-Kuzari la-Rambam*, pp. 13–36. R. Sheilat explains his translation decision which upsets Kellner on p. 28 n. 26. I used R. Sheilat's translation because I believe it to be the most accurate one available, despite Prof. Kellner's aspersions. As it happens, on the relevant line in III:17, R. Kafih's translation is virtually identical: ומי שאמר את כל אלה: (בכוונה גמורה, הרי הוא ישראלי באמת.)

## Divine Providence and Free Will

I WRITE IN RESPONSE to the erudite and informative article of Dr. Alan Kadish on the reconciliation of G-d's intervention in the natural world with a mechanistic view of the universe and its physical laws. Specifically, Dr. Kadish refers to the work of Dr. Nicolas Saunders, who raises issues concerning the recognition of Special Divine Action (SDA) within the laws of the cosmos. Dr. Kadish similarly examines the issue of a deterministic universe with regard to Judaism's resolution of the issue of man's free will in a universe determined by the will of the Almighty.

While Dr. Kadish provides a scientific model for so-called SDAs, he does not fully address the **scientific** issues regarding determinism and free-will or free-choice. While some of Dr. Kadish's insights (such as recent developments concerning quantum theory) would be applicable to free will, it would be most useful if a further article exploring scientific issues regarding free will

would be forthcoming. These are two very different models of determinism, but the resolution of free action in a deterministic system is similar. This is an ever more important issue today as scientists are attempting to create a neuro-physical model of brain activity. Man's actions in affecting (and undermining) the stability of earth's ecosystem is well-accepted by many scientists. Understanding man's free will would obviously also address questions on the determinism of natural laws, since mankind by its actions interacts with the world in potentially profound ways.

With regard to the overall issues raised by Dr. Saunders, I had the following general comments:

While the world may seem deterministic to a philosopher or a physicist (or a mathematician, for that matter) examining equations, a human being living on earth experiences the world around him or her as very much a non-deterministic one, a world in which seemingly random events occur, many predictable but others surprising or even seemingly miraculous. Mathematicians can predict the likely outcome of the repetition of independent random events using what they call the "Law of Large Numbers." While there are various theories regarding the origin of statistical consistency and the ultimate randomness of these events, all agree that certain events follow probabilistic patterns. These probabilistic laws do not dictate the outcome of individual events, and, although the probability of long term deviation

from the mean can be measured, these deviations occur with a measurable probability. Special Divine Action, which we call "*hashgacha pratit*," individual providence, can easily occur within these seemingly random events, and believing Jews experience such providence, without expecting that this providence would violate the natural order of the universe. These are included within the Modim prayer, recited thrice daily, wherein we thank the Almighty "... *v-al nisecho sheb'chol yom imonu* (and for the miracles that occur every day...)."

Both the Bible and halacha assert that *nissim*, miracles beyond the everyday, can occur even in our own era. The blessing of "*she'oso nissim* (Who made miracles...)", recited on both Chanukah and Purim, seeks to publicize the miracles of both of those events, which are valued equally as miraculous, although the miracle of Purim may be a *nes nistar*, a hidden miracle. These miracles involved not only the burning of oil beyond the expected time limit, but battlefield victories and political decisions ultimately deciding the fate of the Jewish people.

The halacha also seeks to define the circumstances for which one can recite the individual blessing "*she'oso li nes ba'makom ha'zeh* (Who made a miracle for me in this place)" on individual miraculous events. According to some halachic decisors, we would need a miracle beyond normal human experience to recite such a blessing, but not an experience to overrule the laws of

the cosmos. The Halacha asserts that we can and need to recognize Special Divine Action, even if such would not be recognized by Dr. Saunders.

As a final observation, even if the “equations” governing the physical universe were such as to provide unique solutions, and thus to determine future results, knowledge of these results would be predicated on perfect knowledge of initial conditions. Precisely because the equations of complex systems such as those governing weather conditions are unstable and heavily sensitive to changes in initial conditions, chaotic systems arise that are extremely difficult to predict on a long-term basis. Human-kind’s knowledge is far from perfect; as Dr. Kadish rightly points out, the Heisenberg Uncertainty principle may even set forth some absolute limits on what can be physically known, since measurement itself may interfere in the process and make it impossible to measure momentum and position simultaneously. Chazal tell us, “*Ain habrocho sboruy eleh b’dovor hasomuy min ha-ayin* (Blessings can reside only in material that is hidden from the eye).” Much of human experience is, indeed, hidden from human eyes, our actual measurement (if not the Almighty’s), and it is there that blessings and Special Divine Action can take place.

Principles generally germane to the interface of science and religion are reviewed by the Rashba in a *teshuva* (*Shu”t Rashba* [1:9]). The

Rashba is asked concerning an assertion he had made, based on Talmudic sources that Chazal believed that the world would cease to exist at the end of 6000 years, a position refuted by Maimonides. In this *teshuva*, the Rashba, interestingly enough, appears somewhat sympathetic to the position of Maimonides as to the reinterpretation of medrashic, or even biblical, texts when they come into conflict with a naturalistic physical worldview. However, Rashba asserts, such a leniency in interpretation needs to have limits, even for Maimonides, when it conflicts with accepted doctrines and beliefs derived from revelation. Revelation or prophecy represents a higher-level wisdom, as opposed to the scientific wisdom derived from human “*hakirah* (investigation).” Rashba maintains that the potential end of the universe is an accepted kabbalah or received tradition among the Jewish people.

On the matter of the eternity of the universe, Rashba understands well that science, based on its own understanding of the natural order, its observations of the stars and planets conducting their ordered rounds, and the world following its formulas and determined ways, would not agree with the concept of a sudden end to the universe. (Curiously, thanks to advances in scientific knowledge, we can now more easily conceive of a catastrophic end to human existence than ever before.) Rashba points, however, to the differences in methodology and philosophy of scientific wisdom,

derived solely from its own observations and denying any other avenue of truth but its own, and rejecting the potential for G-d's intervention in nature such as the splitting of the sea, the giving of the Torah, or other miracles.

A constant of Jewish theology is that the Almighty and His *Chochma* (wisdom) are one and the same. Since the Almighty cannot be totally known, neither can the *Chochma*, by which He orders the universe, be totally understood. Our knowledge of the universe, dictated by our own finite understanding, is therefore limited. To this end, Rashba points to the incompleteness of man's scientific knowledge of the world, using the phenomena of magnetism as an example. No doubt, Aristotle, if merely told about magnetism, would have rejected it as impossible, as a phenomenon he could not explain based on a materialistic interpretation of the universe. Once magnetism was demonstrated, Aristotle worked to develop a theory for magnetic action. (One is reminded of Einstein's characterization of gravity as "spooky action at a distance" and his own efforts to explain it.)

Rashba argues that Judaism, too, incorporates additional axioms, based on its revealed knowledge of the Almighty, to explain that G-d, the Creator, may intervene in nature to preserve the natural order or to change it. Therefore, the Rashba asserts, even a scientist such as Maimonides recognizes that the wisdom of the Almighty is greater than

that of humankind, and that doctrine takes precedence over our knowledge derived from the natural order. Finally, Rashba reminds us that science is always subject to change, that Plato disproved philosophers before him, and that Aristotle subsequently rejected the teachings of Plato. Therefore a healthy skepticism for the claims of science needs to accompany anyone in seeking to address scientific criticism of religious doctrine.

Dr. Kadish has shown us how to incorporate the opportunity for Hashem's actions even within the scientific world-view of natural causation. We need to be aware that science itself is never complete, and that there always is a time and need and potential for Special Divine Action.

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I ENJOYED the interesting article "God, Man, Chaos and Control: How God Might Control the Universe" by Dr. Alan Kadish (*Hakirah* volume 20), which considers the apparent conflict between divine providence and free will. I would like to comment on this article, and also add something to what I wrote on this subject, in "Divine Providence and Natural Forces: Conflict or Harmony" (*Hakirah* 19).

The author asserts (pp. 124–128) that "Attempts to reconcile providence and free will in the Jewish intellectual tradition essentially

fall into four categories.” The four categories are: 1) that the conflict is a paradox and inexplicable to man, 2) placing limitations on free will, 3) placing limitations on providence, and 4) reconciling free will and providence without limiting either. The author (p. 124) suggests that a statement of Rambam in *Hilchos Teshuva* falls into the first category. Although Rambam (*Hilchos Teshuva* 5:5) does in fact write that the ideas of divine foreknowledge and free will cannot be reconciled to our limited understanding, I am not convinced that Rambam would consider divine providence and free will to be similarly irreconcilable.

The author assigns Ralbag to both the third and fourth categories. The author writes (p. 125) that Ralbag “presents a view that creates a complex system of rules for the world... Yet this system, which proscribes an observable schematic for divine action, disallows a particularized Divine providence.” Later, the author expands further on Ralbag’s position (p. 127): “He believed that God created a series of natural forces that rule the world and determine events on both the large and small scale. In some cases, God may choose not to pay attention to the details on a day-to-day basis. This radical approach is not shared by many others, but it has its adherents.”

These two descriptions of Ralbag’s position are different—is particularized divine providence precluded or does God simply choose not to intervene at times? If the author’s intention is that Ralbag

adopts these contradictory approaches in different places, I do not think the author sufficiently demonstrates that this is the case.

Moreover, in contrast to the author’s assertion that the approach that maintains that God created a series of natural forces, and in some cases chooses not to intervene, is radical, I think it is actually widely held. In my article I argued that this general approach—that natural causes can be causal—is adopted by many authorities (while there may be disagreement on the nuances) including Ramban, Rabbenu Bechaya, Rabbi Yehuda HaLevi, *Drashos HaRan*, Ramak, *Sefer HaChinuch* (whom Dr. Kadish also counts as an adherent of Ralbag’s approach based on his explanation for the mitzvah of *maakeh*), Maharal, and Ramchal, among others.

In my article I suggested that R. Eliyahu Dessler disagrees with this approach and maintains that natural forces are never causal and that in every instance God directly intervenes. I would like to add (in contrast to what I wrote in my original article in fn. 31 on pp. 266-267) that the *Meshech Chochma* may also agree with Rav Dessler. His description (*Vayikra* 26:4) of a person coming to recognize that *teva* is “just miracles that are one after the other” suggests that he may not accept any independent, causal role for *teva*. This interpretation is also supported by the *Meshech Chochma*’s insistence (*Devarim* 31:17) on interpreting adversity as direct divine punishment as opposed to being the indirect result of God refraining

from intervening in the course of nature.

After publishing my article, I was shown *Sefer Yadav Emunah* by R. Chaim David Sapirstein (Ramat Beit Shemesh 5775) which explores Ramban's approach to various topics in hashkafa. R. Sapirstein (*Shaar 6 Perek 2*) focuses on the apparent contradiction in Ramban that my article considered and cites several relevant sources that I missed—ultimately adopting a similar approach to what I suggested in my article.

I also want to suggest that a partial precedent for those who maintain that natural forces are never causal (such as the *Meshech Chochma* and Rav Dessler) may be the *Chovos Halevavos*. See *Sefer Yadav Emunah* (*Shaar 6 Perek 5*) and *Emes LeYaakov* (beginning of *Bechukosai*) by R. Yaakov Kamenetsky for their analysis of the difference between the positions of Ramban and the *Chovos Halevavos* (see especially *Perek 3 Hakdama 5*) regarding the utilization of natural means (i.e., medical methods) to cure illness (earning a living is another example). They explain that according to *Chovos HaLevavos*, although natural methods are required to cure illness, these methods are actually not related to the outcome in a natural sense. Ramban, however, maintains that with the exception of the most righteous who do not need to pursue natural methods, the natural methods are in fact related to the outcome.

However, I would still point out that even *Chovos HaLevavos* agrees that natural forces can be causal as

evidenced by his statement (beginning of *Sha'ar HaBitachon*) that when someone places his trust in something besides God, God responds by allowing his fate to be determined by that which he placed his trust in.

Finally, I also wanted to point out a typo on p. 266, fn. 26 where “*banbagas ha-mishpal*” should read “*banbagas ha-mazal*.”

*Micah Segelman*  
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I HAD THE HONOR to contribute to the same issue of *Hakirah* in which Dr. Kadish's excellent article on quantum theory and the divine appeared.

It occurred to me that Dr. Kadish's thesis might resonate with Rav Joseph Soloveitchik's commentary to *Acharei Mos*, which I just read in the new *Neuwirth Chumash* with the Rav's footnotes.

I found Soloveitchik's commentary on Leviticus 16 (the ancient Yom Kippur service) astonishing: he teaches that we never quite know how much of our action is due to free will and how much due to force of circumstance. This is known only to God. In this context he clarifies the meaning of perhaps the strangest and most archaic ritual in the whole Torah:

6. Aaron is to offer the bull for his own sin offering to make atonement for himself and his household.



7. Then he is to take the two goats and present them before the Lord at the entrance to the tent of meeting.
8. He is to cast lots for the two goats—one lot for the Lord and the other for the scapegoat.
9. Aaron shall bring the goat whose lot falls to the Lord and sacrifice it for a sin offering.
10. But the goat chosen by lot as the scapegoat shall be presented alive before the Lord to be used for making atonement by sending it into the wilderness as a scapegoat.

Soloveitchik writes:

There is a profound idea behind the casting of lots in this ritual of atonement. The penitent argues that his moral directions were influenced by forces beyond his control, that his sinning was not entirely a free and voluntary choice. The Almighty can evaluate the extent of human culpability in situations that are not entirely of man's making. Only God knows to what extent a man was a free agent in making his decisions. The casting of lots is thus a psychodramatic representation of the penitent's state of mind. The compelling intrusion of the unknown and irrational is basic to man's existential condition, and his weakness in the face of such intrusion qualifies him to reserve God's compassionate forgiveness on Yom Kippur. Only by entering such a plea can man be declared

not guilty.

Chance, the Rav says, inevitably manifests itself even in our perception of the moral realm. *Kal va-chomer* it must do so in the physical realm.

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*Alan Kadish responds:*

I thank Stanley Boylan, Micah Seligman and David Goldman for their interesting insights.

As regarding David Goldman's letter, I fully agree that circumstances modulate the choices that we are left to make and that only God can fully understand the tests that He places before us. As the old story stipulates, our job is not to be Moshe but to be Reb Zusha.

### Ba'alie Ha-Tosefot

I READ ARYEH LEIBOWITZ'S article "Redacting Tosafot on the Talmud..." *Hakirah*, vol. 20 with much interest and I wish to make a short comment about the biographical elements mentioned in fn. 32, p. 244. The author refers to E. Urbach, *Ba'alei ha-Tosafot* p. 584, at the end of the book in the index. Some information can also be found on pp. 455-456.

According to the author, R. Eliezer was a German rabbi who spent some time in France as did R. Meir of Rothenburg. This is indeed

one possibility, but it seems more likely that he was a French rabbi who spent some times in Germany and who probably married there.

The name of R. Eliezer is bound forever to the little town of Touques at the mouth of the river of the same name, in the department of Calvados in the Normandy region in Northern France. It is contiguous to the fancy seaside resort of Deauville. In the 13th century, Touques was a busy harbor specialized in the trade with England.

When googling Touques (Google.fr), R. Eliezer the *tosafist* of the 13th century is mentioned as the earliest known local celebrity of the town. It is not often that a small town prides itself as the birthplace of an ancient rabbi.

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*Aryeh Leibowitz responds:*

I thank Eng. Ajdler for taking the time to comment on my article about R. Eliezer of Tukh (טוך). He is correct that traditional scholarship has identified טוך as the French city of Touques, and it is likely for this reason that the editors of Wikipedia assumed him to be a notable resident of that city. However, a growing number of scholars are beginning to realize that טוך may very well be a German city. One suggestion is that טוך is the small town of Tucheim that lies northeast of Magdeburg, Germany.

There is a significant amount of data that links R. Eliezer with German Tosafist circles. I elaborated on this topic in an article titled “R. Eliezer of Tukh: A German Tosafist,” which can be found in *Yerushbaseinu* 7 (2013): 5–18. I direct the reader to that article, however I will note here some of the more significant points made in that article.

R. Eliezer’s mother’s family lived in Germany. His maternal uncle was R. Hezekiah (מהרי"ח), an important rabbinic figure who flourished in Magdeburg, and R. Eliezer’s maternal grandfather was R. Yaakov, the Chief Rabbi of that German city. Moreover, a significant number of R. Eliezer’s teachers and colleagues were from Germany: first and foremost, R. Isaac Or Zarua, a central figure in the German Tosafist culture who flourished in Vienna, but also lived in Regensburg, Magdeburg, and Wurzburg. Other German figures that R. Eliezer associated with include R. Meir of Rothenberg, R. Judah Ha-Kohen of Friedberg, and R. Yehidiah of Nuremberg.

I believe it to be significant that the only known, or at least most well-known, responsum of R. Eliezer addresses the decision of various German scholars regarding a halakhic question that arose regarding the German city of Goslar. Note also, that another responsum regarding this issue—upholding R. Eliezer’s ruling—was written by R. Hayyim Paltiel, a German scholar who served as the Rabbi of Magdeburg, and was a self-proclaimed student of R. Eliezer.

R. Eliezer's recorded correspondences were almost exclusively with German scholars. The most famous correspondent was R. Hayyim Or Zarua, the son of R. Eliezer's teacher, R. Isaac Or Zarua. In addition, there are at least two halakhic sources that suggest R. Eliezer's physical presence in Germany.

Add to the above data multiple testimonies that directly associate R. Eliezer with Germany. For instance, R. Hayyim Or Zarua refers to R. Eliezer in one responsum as the "head of the community and its leader." In another responsum, he suggests that R. Eliezer led a community in Nuremberg, and may have presided over the rabbinical court in that German city.

When all of the relevant data are considered, it does appear that R. Eliezer is to be associated with the German Tosafist culture, and that Tukh is likely not Toques, France. Yet, there is no doubt that R. Eliezer also studied in France. R. Eliezer explicitly references his French teacher, R. Yehiel of Paris, numerous times as "my teacher," and in one location R. Eliezer comments on "the answer I received in France." Furthermore, a tradition exists from the brother of the prolific French Tosafist R. Perez of Corbeil that R. Eliezer studied in France with the great French Tosafists.

As mentioned, I invite readers to consult my longer treatment of this issue in *Yerushbaseinu* and thank Eng. Ajdler for raising this interesting historical question.

## Rabbinic Authority

SOLOMON SCHECHTER used the phrase "Catholic Israel" (admittedly somewhat inappropriate terminology) to make an important point. While it is true, as Buchman writes, that "Ramban consistently contends that it is the acceptance of the people that gives authority to the Rabbis," the people referred to are not a random sampling of garden-variety Jews. They refer to those described by Schechter as knowledgeable and committed to *Halakhab* (i.e., Catholic Israel).

The formidable challenges faced by the Conservative Movement today reflect, to a great degree, decisions made for (and sometimes by) those possessing marginal Judaic knowledge and commitment. Unquestionably, rabbinic authority is dependent upon acceptance by the people. The important question is "Which people?" In this connection, I would be most interested in seeing a future article in *Hakirah* on "Open Orthodoxy." Your publication could provide a sane and rational venue for such a discussion.

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*Asber Benzion Buchman, ed., responds:*

I thank Dr. Shochet for making his clarification as to which "people" are relevant as a source for Rabbinic Authority. I would add that, I contrasted Ramban's view with that of

Rambam who sees rabbinic authority solely dependent on the Rabbis' *kabbalah* and rooted in the Torah command of *lo sassur*. But even Ramban would agree with Rambam that in matters of actual practice the authority that rests with the people is only to limit the Rabbis' authority to legislate new laws, and both are in full agreement that the interpretation of the Torah's laws is solely in the hands of our greatest Torah scholars.

Moreover once the Sages have legislated a rabbinic decree and it has spread throughout Israel, there is no power that can recall it. In that light, I would like to emend a translation of Rabbi Sperber in our Forum section with regard to this issue. Rabbi Sperber quotes Rambam in *Hilchos Mamrim* (2:11) as saying:

If they ruled, assuming that their ruling was accepted by all Israel, and their ruling continued to be accepted for many years, and after a long period of time another *beit din* examined the situation and found that that ruling now was not accepted by all Israel, that *beit din* has the right to annul it, and even if they are of lesser status than the earlier one in wisdom and number.

The actual text of the Rambam reads as follows.

גזרו ודימו שפשטה בכל ישראל, ועמד הדבר כן שנים רבות, ולאחר זמן מרובה עמד בית דין אחר, ובדק בכל ישראל וראה שאין אותה הגזירה פושטת בכל ישראל--יש לו רשות לבטלה; ואפילו

היה פחות מאותו בית דין הראשון בחכמה ובמניין, יש לו לבטל. וכל בית דין שהתיר שני דברים, אל ימהר להתיר דבר שלישי.

The following translation is based on that of Rabbi Eliyahu Touger's that is found on the Chabad site on the Internet, with my own modifications.

If they issued a decree and thought that it spread among the entire Jewish people and the situation remained unchanged for many years. And after a long duration of time, another court arose and checked throughout the Jewish community and saw that the observance of this decree has not spread throughout the Jewish community, it has the authority to negate the decree, and even if it is of lesser stature than the original court in wisdom and in number of adherents, it has the right to annul it.

From Dr. Sperber's translation, one might think that this latter *bais din* could annul a rabbinic action based on the practice of a new generation that had abandoned the enactment, while in reality the grounds are only that the original enactment had never spread. In any event the ability to nullify any enactment still depends on a *bais din* of *musmachim* that no longer exists, and until *semicha* is reestablished, all the enactments of the Talmudic courts are unimpeachable.

With regard to Dr. Shochet's suggestion that *Hakirah* should be a

venue for the discussion of Open Orthodoxy, I believe, that without actually mentioning the term, we have been a forum for discussing the halachic and hashkafic issues that Open Orthodoxy raises. Rabbi Sperber's and Rabbi Frimer's debate in this edition is an example of the type of discussion that is often found in *Hakirah*. Yet, in response to Dr. Shochet I would like to add a few words relevant to their exchange.

Dr. Sperber points out that there are strong halachic arguments for changing *minhagim*, and Dr. Frimer does not argue this point but points out quite aptly that the issues Dr. Sperber raises are matters of *din*, and as I have noted above we are no longer in a position to change the halachic decisions of *Chazal*. What *Chazal* tell us is prohibited as *kavod hatzibbur* remains prohibited in later generations even though many in that generation do not sense any lack of *kavod hatzibbur* in such practices. Orthodoxy is in opposition to Progressivism and within Judaism this means the acceptance of the judgment of *Chazal*, not merely acquiescence, but understanding that their judgement is correct. Our goal in Talmud Torah is to learn to think like *Chazal*.

Rabbi Sperber says of several of our *dinim* (which he considers *minhagim*), "in many cases having serious deleterious effects, alienating significant sectors of the community from Orthodox Judaism, or detracting from the spiritual experience in the synagogue. Consequently, I suggested, that certain

changes should be initiated, changes that would benefit the community." But, Orthodoxy in contrast to Progressivism seeks to change us, not the laws.

Rabbi Sperber fears that many women will be alienated from Judaism if changes are not made to accept feminist demands. We can only answer that the Torah tells us that we are *המעט מכל העמים*. The difficulties of observing Judaism have always prevented it from becoming widely accepted. Yet *Shlomo Ha-Melech* found that *דרכיה דרכי נועם* and most Orthodox Jews feel no need to change anything, and in fact we believe that eventually all nations of the world will recognize Judaism's eternal truths. On the other hand, if our primary concern should be what retains the largest numbers, then Rabbi Sperber should be looking to introduce Chassidism to the Modern Orthodox world—since there the dropout rate is almost *nil*. Modern Orthodoxy does not do so not because it finds *Charedi* strictures too difficult but because of halachic and philosophical disagreement with some of their attitudes and positions. For the same reason Modern Orthodoxy cannot accept practices being adopted by Open Orthodoxy.

Still, I am largely in agreement with Rabbi Sperber in the belief that we should not be always bound by previous practice. When a matter is an issue of halachah, Rambam says (*Iggeros HaRambam*, Shilat ed. pp. 278-279) that it is forbidden to accept and further entrench an errant *psak* even if it has been practiced for

many years. Rambam and the Baalei Tosfos scrupulously studied the Talmudic sources and overturned the rulings of the Gaonim when they felt they were in error. I have never been certain of the practical conclusion that is meant to be drawn from Rabbi Haim Soloveichik's *Rupture and Reconstruction*, which seems to suggest that tradition should take precedence over reasoned halachic judgment. We can hardly justify all our traditions, when in our *vidui* we say *anu v'avosenu chatanu* and acknowledge that our forefathers were also not without fault. The prohibition of *chodosb*—a clear Torah violation—was almost totally ignored throughout *chutz la'aretz*, and now it has been largely reconstructed in places where people are scrupulous

in mitzvos. Interestingly, certain element of the Charedi world lag behind in the observance of this mitzvah *d'oraissa* while accepting large numbers of *chumrabs* that are part of their tradition even though they are halachically largely unfounded. This demonstrates the danger of making *mesorab* primary and pushing original sources and original intent to the side.

As *chodosb* was redeemed in *chutz la'aretz*, I believe that *birchas cobanim* can be so as well, especially as the sefardim already practice it. This is certainly a matter of halacha, and if Rabbi Sperber wishes to spearhead a movement to return *atarab l'yoshna* with daily *birchas cobanim*, I believe he will find many allies in the Modern Orthodox and Charedi world.

