

THE PORTRAIT OF MOSES

TO THE EDITOR:

Dr. Leiman's presentation and analysis (*Tradition* 24:4, Summer, 1989) of the controversy generated by Rabbi Lipschutz's inclusion in his commentary on the Mishna of the story of Moshe Rabeinu's portrait, is both scholarly and fascinating. There are, however, several points which bear further examination which I wish to address.

There are two issues: the first is whether the alleged event took place; the second concerns the message conveyed by the story bearing on the character of our teacher Moses. Is the character portrait of Moshe Rabeinu congruent with Jewish teachings? As regards the first issue Rabbi Rapoport cites arguments presented by Rabbi Diskin whose intention it was to prove conclusively that this supposed event did not transpire. R. Diskin's undisputed position as a giant of halakhah, and the respect and deference accorded him by his contemporaries, endow his viewpoint with towering authority. Careful perusal of R. Diskin's arguments, one of which is presented in footnote 9 of Dr. Leiman's article, shows that R. Diskin took exception to the contention that such an event actually happened. There is, however, no indication in the arguments presented by him that he concurred with R. Rapoport's vehement objection to the implications of the story. True, there is an allusion to the comment attributed to R. Diskin, which says in essence that heaven forbid that we should entertain the thought that Moshe Rabeinu did indeed have base characteristics. However, this is not a direct quote of R. Diskin, it may merely be R. Rapoport's perception of R. Diskin's position. The fact remains that R. Diskin's arguments were directed only against the supposition that such an event occurred.

The second issue, whether Moshe Rabeinu was born with exemplary traits, or had to overcome negative facets of his character, is undoubtedly of greater theoretical importance. R. Lipschutz and the Hasidic masters cited by Dr. Leiman are of the opinion that our teacher Moses had to labor to overpower base character traits, whereas R. Rapoport and R. E.D. Rabinowitz-Teomim, and others mentioned by Dr. Leiman, feel that such a position is unthinkable and untenable. Rabbi Hayim Ibn Attar's position is not clear. The passage of *Or Ha-Hayim* quoted by Dr. Leiman states that Moshe Rabeinu's humility was not inborn. It does not however imply that Moses' genetic character make-up was composed of negative traits.

An analysis of the ramifications of the contrasting approaches is called for. It is theoretically feasible to postulate that not only were Moshe Rabeinu's character traits ignoble but that he actually sinned in his youth. This, however, does not seem to reflect anyone's position, and neither R. Lipschutz's nor the Hasidic masters raise such a possibility. This established, a discussion as to whether a *baal-teshuva* is to be considered worthier than a *tzadik* is not relevant. This would seem to be what R. Rabinowitz-Teomim stresses in his letter to R. Rapoport. He is responding to one of R. Rapoport's criticisms of R. Lipschutz's position by asserting that although he fully agrees with R. Rapoport, raising the issue of who is worthier, a righteous person or a *baal-teshuva*, is not germane to the problem, since Moshe Rabeinu had not sinned. It is, however, difficult to fathom R. Rabinowitz-Teomim's intent, and his reasons for quoting other pronouncements are presented as proof refuting R. Lipschutz's approach. For example, R. Rabinowitz-Teomim singles out the comment of the sages that both Moses and Aaron were righteous throughout their entire lives. It therefore seems as if he understood

R. Lipschutz as espousing that Moses was not without actual blemish during his youth. As stated above, however, nowhere does R. Lipschutz advance such a theory. Perhaps R. Rabinowitz-Teomim is of the opinion that arguing that Moshe Rabeinu was born with grave character defects is tantamount to saying that he sinned. This seems far-fetched and is a difficult stance to maintain.

Dr. Leiman quotes R. Moses Hayyim Ephraim of Sudylkow, the Baal-Shem-Tov's grandson, who writes in his grandfather's name that "our teacher Moses, was born with a natural inclination toward wickedness. Every vice was his. But he overcame his vices, transforming them into virtue." Dr. Leiman comments "this earthly view of Moses appears to have no parallel in classical Talmudic or Midrashic literature, nor do kabbalistic sources seem to support such a view regarding Moses." The quotation is, in my opinion, misleading in that it creates the impression that the author of the *Degel Mahaneh Efrayim*, is portraying Moshe Rabeinu as created with an inclination exclusively for evil and wickedness. If indeed this is his position, then the passages from the sages and Zohar quoted by R. Rapoport (see Leiman's footnote 26) would contradict this perception of Moses. This impression is arrived at because only part of the *Degel's* comments are brought to our attention. In actuality, the *Degel* states that Moses was endowed from birth with both the most saintly virtues and highly detrimental traits. The *Degel* utilized this conceptualization of Moshe's character to explain our sages' declaration that the Jews suspected Moses of committing grave sins. They, the Jews of Moses' era, attended to only the negative aspects of his inborn character traits and neglected to respond to his saintly attributes, which were also inborn. Viewed thus, the passages affirming the incomparable saintly aspects of Moshe Rabeinu are not in opposition to the *Degel's* thesis.

The issues raised are highly pertinent to one of Judaism's basic contentions which underlies its approach to reward and punishment. No less an authority than

R. Hayyim of Volozhim (*Ruah Hayyim*, chapter 4, Mishna 2) asserts that the Almighty granted the evil inclination a measure of power exceeding that of the good inclination. This was done so that man's freedom to choose between good and evil would be based on a balanced set of options. Were it not for this, man would naturally lean toward following the dictates of the good inclination, thereby upsetting the desired balance. R. Dessler discusses the implications of this concept in his *Mikhtav me-Eliyahu*, Vol. 2, p. 238, and Vol. 3, p. 224. The position held by R. Lipschutz and the Hasidic masters can be easily integrated with the viewpoint stated by R. Hayyim and expounded by R. Dessler (who does not quote R. Hayyim). Every human being is subject to the trials and tribulations of this world, which are mirrored and reflected in the person's primary task of overcoming the evil inclination. To say otherwise would seem to contradict the concept of the choice and its attendant corollary of reward and punishment. Even Moshe Rabeinu, the epitome of virtue of holiness, is not exempt from this task. Whether Moshe was or was not created with negative character traits, is not the crux of the matter. The larger issue is the realization that even he had to grapple with an inclination. His everlasting greatness resides in that his struggle resulted in his attaining a supreme level of holiness.

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SHNAYER Z. LEIMAN RESPONDS:

I am indebted to Dr. Rabinowitz for his careful reading of "Rabbi Israel Lipschutz: The Portrait of Moses" and for providing me with an opportunity to expand on the original essay.

1. Essentially, Dr. Rabinowitz is sympathetic to the stance of R. Israel Lipschutz and the Hasidic masters. That R. Eliyahu David Rabinowitz-Teomim (henceforth: Aderet) was not similarly sympathetic troubles him. Dr. Rabinowitz concludes: "Whether Moshe was or was not created

with negative character traits, is not the crux of the matter. The larger issue is the realization that even he had to grapple with an evil inclination.” It would appear, however, that for Aderet the crux of the matter was precisely the historical claim that Moses was innately inclined toward evil, and that only through sustained self-determination was he able to overcome his inclination. Not only could Aderet, the consummate Talmudist, not locate even one passage in classical rabbinic literature that supported the historicity of such a claim, he was persuaded that the claim originated in “the pagan literature of antiquity.” (See the original essay, where it is indicated that the earliest version of the account is recorded in Cicero’s *Tusculan Disputations*, and was told about Socrates.) What was at stake here, then, was not only a mistaken view about the nature of Moses, but the worst kind of contamination of rabbinic teaching—and it was precisely R. Israel Lipschutz’ *Tiferet Yisrael* that accorded that contamination a legitimacy it would not otherwise have had outside of ḥasidic circles. The interesting question is: How did Aderet, in a broadside published in 1894, know that Lipschutz’s account of the portrait of Moses was borrowed from “the pagan literature of antiquity”? Two possible solutions are: (1) He saw or owned a copy of H.Y. Pollak’s edition of R. Isaac Arama, *Aqedat Yitzḥaq*, Pressburg, 1849, vol. 4, p. 85b, where reference is made to the pagan account with Socrates as its hero, as well as to a late Jewish version with Moses as the hero. (2) He saw a copy of Isaac Baer Levinsohn’s *Te’udah be-Yisrael*, Vilna, 1855 (second edition; the first edition lacks the reference to Cicero’s account), pp. 122–123, where reference is made to Cicero’s account with Socrates as the hero. (That Aderet read at least some of Levinsohn’s writings is evident from his autobiography. See *Seder Eliyahu*, Jerusalem, 1983, p. 65.) Persuaded of the account’s pagan origin, Aderet’s rejectionist approach need occasion little or no surprise. Dr. Rabinowitz’ more sympathetic approach to the portrait of Moses legend—and his critique of Aderet—is possible precisely

because he distinguishes between the question of historicity and the theoretical issue, preferring to focus on the latter. Indeed, a distinguished Lithuanian colleague of Aderet, R. Yosef Zechariah Stern (d. 1903), in his *Ma’amar Tahalukhot ha-Aggadah*, Warsaw, 1902 (reissued together with *She’elot u-Teshuvot Zekher Yehosef*, Jerusalem, 1968, pp. 39–40), offered a very similar critique of Aderet. He too did so only after establishing (to his satisfaction) that the account about Moses was late and figurative, not pagan and literal. Viewing the issue from a theoretical perspective alone, he concluded that “there is no reason to criticize the *Tiferet Yisrael*; quite the contrary, his words were spoken wisely. They extol the virtues of Moses, the choicest of humans created by God, according him his due. The words of the *Tiferet Yisrael* inspire all persons to overcome their natural inclination in order to attain the highest level of virtue.” Interestingly, R. Yosef Zechariah Stern was unaware of Cicero’s account with Socrates as the hero—because he had consulted the first edition of Levinsohn’s *Te’udah be-Yisrael* (Vilna, 1828), which mentions only a relatively late medieval Hebrew version of the story. (That Rabbi Stern had consulted the first edition of *Teu’dah be-Yisrael* is obvious from the pagination he records when citing from Levinsohn.)

2. Regarding Dr. Rabinowitz’ analysis of the position taken by the Besht’s grandson, R. Moshe Ḥayyim Ephraim of Sudylkow, one needs to carefully distinguish between the position of the Besht and his grandson. I cited the words of the Besht—and the words of the Besht—as they are quoted in R. Moshe Ḥayyim Ephraim’s *Degel Maḥane Efrayim*. The grandson’s elaboration that follows in the *Degel Maḥane Efrayim* (which I did not mention) represents his view, not necessarily that of the Besht. There appears to be nothing misleading about the quotation of the Besht’s words. In fact, many other early ḥasidic masters state unequivocally (sometimes in the name of the Besht) that Moses was born with a natural propensity for wickedness. Nor do they try to soften the

claim in the manner chosen by R. Moshe Hayyim Efrayim and described by Dr. Rabinowitz. See, e.g., R. Gedaliah of Lunietz (d. 1785), *Teshu'ot Hen*, Jerusalem, 1965, p. 44; R. Menahem Mendel of Vitebsk (d. 1788), *Peri ha-Aretz*, Jerusalem, 1987, p. 98; and the many references alluded to in the original essay, note 31. All these sources underscore the uniqueness of Moses' moral status at birth; he was hardly the typical person endowed with conflicting inclination à la R. Hayyim of Volozhin and R. Eliyahu Dessler. Moreover, not a few of the sources stress that Moses was endowed from birth with every vice (כל מדות רעות); they make no mention of his evil inclination (יצר הרע). Especially tantalizing is the following account in R. Jacob Joseph of Polonnoye (d. circa 1782), *Ben Porat Yosef*, Piotrkow, 1884 (reissued: Jerusalem, 1971), p. 170: "The philosophers (דוכמי הפילוסופים) have written that Moses was endowed at birth with every vice, but succeeded in transforming his nature. Now it is well known that the root of all vice is an evil heart. . . . When Moses transformed his nature, turning vice into virtue, surely his evil heart was also transformed into a kind one." Would that we could identify דוכמי הפילוסופים! How ironic that what other hasidic masters insisted on ascribing to *Hazal* or to the Besht, R. Jacob Joseph of Polonnoye ascribed to the philosophers!

3. For further discussion of the issue: Who is greater, the righteous person who never sins and has no inclination to sin, or the righteous person who never sins but must struggle with his evil inclination and forever transform potential vice into virtue (see the original essay, notes 27–29), see R. Moses Trani (d. 1580), *Bet Elohim*, Jerusalem, 1985, pp. 112–115; cf. R. Yisrael David Harfenes, *She'elot u-Teshuvot va-Yevarekh David*, New York, 1989, vol. 1, §8, pp. 77–84.

FEMINISM AND FAMILY VALUES

TO THE EDITOR:

One marvels at Dr. David Schnall's premises ("Feminism, Fulfillment and

Family Values," *Tradition*, 25:1, Fall 1989) when he questions whether feminism is or is not good for the Jews. Dismissing "theological debates" and relegating egalitarianism to "whether a given congregation chooses to hear words of learning from a feminine voice" insults our integrity and intelligence. *Tradition* might as well have published an article questioning the *takana* against marrying two wives! "Banning Polygamy—Less Shouting but What About Jewish Population?" or "Discouraging Slavery—A Rabbinic Demographic Error?" Schnall seems to argue for quantity over quality both in numbers and in time spent with children, and furthermore places both burdens solely on the Jewish female.

First let us examine if the goals of feminism are *good*. Let us discover whether it is *right* to have Jewish women as educated as Jewish men. Only after we discover what is absolutely correct, as the rabbis did when they banned polygamy and slavery, then we may consider how this would impact demographically. Could Jewish women who are doctors, lawyers, educators, indeed Nobel prize winners, who are unraveling mysteries of the universe in biology and physics, who are contributing to literature, art and music have made similar contributions to Jewish law and lore as rabbis, or *roshei yeshiva*? Have we cheated Judaism for hundreds of years in quality? Maybe we had to because our values were tied to secular sexism for so many centuries. Perhaps, as Rambam wrote, these sacrifices were a concession to a people who had to worship in that way for a limited period of time. Picture for a moment a Judaism that is 100% greater in numbers than we are today. I venture to guess the impact of being 0.6% of world population instead of 0.3% would not be that much more. But imagine for a moment a Judaism that is twice as rich in culture, two times deeper in understanding of text and twice as active in ritual participation, because we have fully included Jewish women in the dynamics of *pesak* and *halakha*. Is this the level that we should be striving for when Hashem tells us that Adam was made in God's image "male and

female"? What are we gaining by Dr. Schnall's arguments and what are we willing to forgo, even suppress, to produce more Jews? What is really "good for the Jews"?

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DAVID SCHNALL RESPONDS:

Dr. Comet-Murciano accuses me of insulting both his integrity and intelligence through my assessment of "egalitarianism." Let me assure him that I had no such intention. In fact, the term appears nowhere in my article. I am aware that for many American Jews egalitarianism (full female participation in religious services, rites and customs) is a matter of deeply held moral principle and faith. I was careful not to join the issue of egalitarianism with secular feminism while exploring instead some of the contemporary impacts of secular feminism on the Jewish community.

Comet-Murciano accuses me of arguing "for quantity over quality both in numbers and in time spent with children." But, throughout, my concern was with qualitative changes in patterns of courting, child-rearing, family life and Jewish communal organization. The point which Dr. Comet-Murciano has clearly misunderstood is that demographic changes often bespeak qualitative ones as well. To blindly separate the two is naive, at best. Further, it is my judgement that some of these changes have not been "good for the Jews."

In addition, while I deny his charge of being concerned sole with "the numbers," he seems to operate under the impression that quantitative concerns don't exist at all. The proposition is equally untenable. For an example one might examine the increased visibility and influence of Haredi communities in Israel or Hassidic and Yeshiva communities in the United States. Many factors have contributed to this development, but early marriage and a birth rate dramatically higher than that in the general Jewish community can hardly be ignored as important contributors to growth. Once

again, demographic patterns have profoundly qualitative implications.

Dr. Comet-Murciano has also accused me of placing the burdens "solely on the Jewish female." Obviously, an article dealing with secular feminism will focus on the role of women. Much else could be said about the Jewish family, but this was not the topic of the article. Further, to speak of burden or blame is really beside the point. The important question is how, if at all, these changes will be accommodated. And in that regard I state unequivocally, that

for Jewish family values to flourish, men will also have to rethink their commitments of time and resource to family and children . . . [and] serve as full partners in the familial enterprise. (pp. 48-49)

I am mystified by Comet-Murciano's call to examine what is "absolutely correct" in regard to the education of Jewish women and their inclusion "in the dynamics of *pesak* and *halakha*" as Rabbis and Roshei yeshiva before evaluating demographic impacts. If this is his personal quest, so be it. I suspect that the findings he will gather—at least from many authoritative sources in contemporary Orthodoxy—will disappoint him. Demographic considerations—especially those that have an affect on family structures and communal patterns—have a religious dynamic of their own and are often included in the rabbinic determination of that which is "absolutely correct."

Comet-Murciano seeks to invoke Rambam to support his position. Here too he has misread and even abused the text. The oft-cited reference to the *Moreh Nevukhim* is very specifically part of a discourse on animal sacrifice. There is no evidence to suggest that Maimonides intended its application to include feminism.

Comet-Murciano also seems intent on believing that I champion the idea of numerical growth at the expense of Jewish education and ritual participation for women. With this in mind, he argues that doubling the current percentage of Jews in the world is less important than developing a Judaism twice as rich in culture, twice as

deep in understanding of text and twice as active in ritual participation. My response is: "Bravo—but once again, off-the-subject."

In fact, except to exclude them from the parameters of my article, I have said nothing whatsoever about Jewish education or ritual participation for anyone and nowhere do I mention Jews as a proportion of the world's population. As noted above, I am concerned with highly qualitative issues that happen also to be linked to demography.

Many issues remain to be confronted in evaluating the currents of secular feminism and their interplay with traditional Jewish family values. How the community will respond to the needs of singles, single-parent families, and general child care concerns are but a few, and there is a limit to how much one can cover in a bare few pages. I will concede that much more needs to be said. Sadly, Comet-Murciano says very little of it.

THE REBELLIOUS WIFE

TO THE EDITOR:

I am grateful to Rabbi Gedalia Dov Schwartz for his review of my book *Women and Jewish Divorce* (*Tradition*, 25:2, Winter 1990). Nevertheless, I believe that his critique of a number of my contentions is based upon an inaccurate reading (or rendering) of the sources. Although I marshalled the unanimous agreement of the Geonim, Alfasi, Rabbenu Hananel, Maimonides, Rashi, Ravan and Rashbam that a woman can initiate divorce against a husband she detests—with the sole dissenting voice of Rabbenu Tam—Rabbi Schwartz maintains that in the "generally accepted rules of *hora-ah* and *pesak*, it is important to understand that Rabbenu Tam was not regarded as a single rabbinic authority to be outnumbered by contrary opinions." As proof text, the reviewer cited the introduction of Rabbi Shelomo Luria (Maharshal) to his work *Yam Shel Shelomo* on *Masekhet Bava Kama*, which "notes that

'the *Ba-alei Tosafot*, the disciples of Rabbenu Tam, were in the majority because eighty *Ba-alei Tosafot* were at one period in the presence of Rabbenu Tam and each one had attained *hora-ah* . . .'" and who cites Teshuvot HaRosh that the French masters (Rabbenu Tam and Rabbenu Yitzchak) were greater in wisdom and number than the Rambam.

Although Rabbi Schwartz does quote the words of Maharshal, he chooses to delete from his citations the entire context of Rav Luria's argument. The purpose Maharshal's introduction is to present a polemic against "halakhic codes," especially against the Mishneh Torah of the Rambam, because "from the days of Ravina and Rav Ashi it is not accepted to decide the law in accordance with any one of the Geonim or the Aharonim but rather in accordance with those whose words are validated and based upon the Babylonian and Jerusalem Talmud."

Maharshal therefore criticizes Rambam for not presenting his sources and for not providing a broader spectrum of halakhic opinion. In direct contrast with Rambam, he cites the *Ba-alei Tosafot* "who argue within themselves in many places. . . . In one place they are the words of the Rabbenu Tam and in another place the words of Ri and Riva. . . . They [the *Ba-alei Tosafot*] make contrasting additions and changes in various places since the *Ba-alei Tosafot*, who were the disciples of the Rabbenu Tam, were in the majority. Eighty *Ba-alei Tosafot* were at the same period [studying] in the presence of Rabbenu Tam and each one of them became a halakhic decisor in his own right, like Rabbi Hayim Katz and Rabbi Eliezer from Metz . . . and their friends and innumerable disciples. . . . And, after all this, it is not only insufficient to have one of their (halakhic) codes . . . since these have become 613 Torot as a result of the propagation of so many disputes." Maharshal continues to criticize Rambam for denigrating the French scholars, and it is only in this context that he cites Rashi who favors the French Masters over Rambam. But, he concludes, "this is not the way. . . . [the law must be decided] in

accordance with those whose words are validated by the Babylonian and Jerusalem Talmud.” Thus, the point of Maharashal is not that Rabbenu Tam is the majority opinion; his point is rather that there is no single majority opinion, and we must therefore return to the Talmudic sources themselves rather than relying on any single authority. This is precisely what I have attempted to do in my book!

Rabbi Schwartz continues to argue that Rabbenu Tam’s opinion has been accepted into the fabric of the *Shulhan Arukh*, the basic code of practice for halakhic Jewry. Far be it from me to detract one iota from the indisputable greatness and stature of Rabbenu Tam. Nevertheless, Rav Yosef Karo, the compiler (Mehaber) of the *Shulhan Arukh*, unequivocally names the three pillars of halakhic decisions as being Rif, Rambam and Rosh, and those are therefore his primary sources (Introduction of Bet Yosef to Tur *Shulhan Arukh*). Even Rav Moshe Isserles states in his introduction: “Generally halakhic decisions are made in accordance with the Tosafot, Maharam, Ra-aviyah, Mordecai, Asheri and the Tur, Rav Yaakov Bar Asher. This is the path with I have followed. . . .” Neither of these two compilers of the *Shulhan Arukh* so much as mentions the name of Rabbenu Tam. And to cite only one example, in the famous dispute concerning the proper order of the parchment scrolls in our tfilin, Rav Yosef Karo (as well as normative Jewish practice) rejects the view of Rabbenu Tam in favor of the view of Rashi and Rambam.

Rabbi Schwartz questions my interpretation of the Jerusalem Talmud that the stipulation in the Ketubah providing the woman with half her alimony payments in case she comes to despise her husband includes his being coerced into giving her a divorce. First of all, the entire context of the passage in the Jerusalem Talmud (7.7 or end of 6 depending on text used) deals with incidents wherein the Court insists upon a divorce being given to the wife; secondly, if the husband still has the final right to withhold a bid of divorcement, the stipulation of his payment of half the payments is

meaningless. He can always insist upon a waiver of his monetary obligation in exchange for his gift of the divorce. It is therefore clear to me that the stipulation in the Jerusalem Talmud—which, by the way, refers to marriage as partnership (*shutafut*)—includes the Court’s coercion of the husband to grant his wife a divorce.

Finally, Rabbi Schwartz finds my attempt to help explain the preponderance of the latter decisions in accord with Rabbenu Tam by suggesting that the decisors lived a “climate of societies wherein romantic love was a rarity and marital stability an axiom of life” to be “presumptuous,” and he insists that “such statements are not within the category of serious Torah scholarship.

I would merely draw attention to the Talmudic statement in the name of Rav forbidding a man to betroth his daughter to another while she is still a minor until she can properly choose for herself the husband of her choice. Ba-alei Tosafot query the contemporary (sic) practice of the fathers betrothing their young daughters and then explain that it was due to the difficult diaspora situation wherein dowry money was precarious commodity, so that of necessity parents betrothed young children whenever they were financially able to do so (Babylonian Talmud, Kidushin 41a, Tosafot, Ad loc). Such betrothals, albeit perfectly understandable given the societal conditions, hardly express romantic love!

In conclusion, my only prayer is that my book serve as a catalyst in seeking a proper halakhic solution to the tragedy of the *agunah*, the woman forced to remain married to a man she abhors, or who does not even live with her. I believe there is ample halakhic evidence upon which to base such a solution.

May the Almighty grant the strength and courage to the halakhic decisors to imbue Jewish family life with peace.

(RABBI) SHLOMO RISKIN

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TO THE EDITOR:

In his review of Rabbi Shelomo Riskin’s book, Rabbi Gedalia Schwartz

criticizes R. Riskin for writing disrespectfully about the Rosh and for arguing that Rabbenu Tam's opinion regarding the coerced *get*, a minority view, need be applied in our time. He maintains that the views of Rabbenu Tam were "accepted into the fabric of the Shulhan Arukh, the basic code of practice for halakhic Jewry." But Maran Yosef Karo generally relied more heavily upon Maimonides, who does not object to the coerced *get*, than on Rabbenu Tam, who does. For R. Schwartz, Rabbenu Tam has become so influential that in the history of halakhic opinion that he has become part of text/*masora* of the Tradition itself.

R. Schwartz cites the Rivash, who argues that Rabbenu Tam takes precedence over Rashi. But this is not as normative a ruling as one might be led to believe. For example, it can be noted that virtually all Jews follow Rashi's opinion with regard to *tefillin*, and while some Jews fix their *mezuzot* vertically to their doorposts, following Rashi, while most incline their *mezuzot* to compromise between Rashi and Tosafot, no one to my knowledge fixes *mezuzot* in accordance with the view of Tosafot.

For Rabbi Ovadia Yosef, whose views are becoming standard among Israeli Sefardim, Rabbenu Tam is almost *never* treated with the same regard as Maimonides. Maimonides' son, R. Avraham, is quoted as saying that "the Torah forbids us to accept someone's statement based upon his status." Maimonides writes in his introduction to his *Yad* that when dealing with post-Talmudic opinion, one accepts the view that makes the most sense. Torah is transmitted through principles, not personalities. Indeed, even a cursory review of the Mishnah would reveal that *Rabbenu ha-Kadosh*, the editor of the Mishna, occasionally presented his own view as the minority, and therefore rejected opinion. Were charisma of person a legal consideration, this would not be the case.

Were one to argue that the Tosafot were strict constructionists and that their views were methodologically tied to an application of Talmudic statute without

deviation, then one would be hard-pressed to understand Tosafot's dispensation to those who do not see their intended mates before marriage, which contradicts Talmudic statute. In point of fact, Tosafot's ruling reflects the appropriate response to the religious, cultural, and spiritual needs of medieval French Jewry, dispersed and oppressed, living in a culture with Catholic sensibilities concerning marriage. To facilitate Jewish marriages, one can understand why Tosafot would rule against the Talmud as a *hora'at sha'a* (as in Rambam, *Mamrim* 2:4) to ensure Jewish mating and continuity. R. Riskin contends that the conditions which motivated Rabbenu Tam's ruling do not apply today, and *unlike* the Talmud of Ravina and Rav Ashi, the words of Tosafot do not have the status of *davar she-ba-minyan*, which is a decision of a *bet din* whose status binds all religious Jewry. R. Riskin is not being disrespectful to Tosafot, who often rules that with changing times, legal applications change.

Further, the Geonim and Maimonides do not object to the coerced *get*. Since these authorities inherited the Tradition of the Babylonian Talmud, one might well surmise that their readings of the Talmudic court which *was* binding on all Israel.

Perhaps the views of R. Schwartz and R. Riskin can be unified by suggesting that a coerced *get* be written only when no other solution to avoid *iggun* is available. The *get zikkuy*, which is used by Ashkenazic *batte din*, is also a controversial instrument, because the husband actually appoints his wife's agent to accept his *get* on her behalf. Generally, one may only appoint one's own agent, not the agent for another person. R. Schwartz follows a tradition which rests upon the charismatic authority of *gedole Torah*. He correctly defends the honor, dignity, and integrity of Rabbenu Tam and the Rosh. R. Riskin argues that the decisions of the Tosafot were grounded in a particular historical circumstance which does not apply in our day. *Both* readings of the *halakhic* literature make sense and it will be up to the *poske ha-dor* to decide individual cases.

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GEDALIA SCHWARTZ REPLIES:

I am well aware of the context of Maharal's description of the authority of Rabbeinu Tam. However, the context within which Rabbeinu Tam rendered his opinion in Tosafot was accepted by the Baalei Tosafot at large (see *Biur Hagra, Even Ha-Ezer* 77:5) against Rambam's opinion. Note also that R. Yosef Karo incorporated this opinion into the text of the *Shulhan Arukh* itself, *Even Ha-Ezer* 77:2.

My statement that the opinion of Rabbeinu Tam was accepted into the fabric of the *Shulhan Arukh* referred specifically to this case of *moredet* which was under discussion, and did not include all areas of the *Shulhan Arukh*, where opinions opposed to Rabbeinu Tam were rendered in other halakhic matters. Therefore, the controversy between Rashi and Rabbeinu Tam in the matter of *tefillin* and *mezuzot* do not apply in considering the meaning of my statement.

Secondly, in regard to Rivash's acceptance of Rabbeinu Tam over Rashi, I do not see any contradiction to Rivash on the basis of the acceptance of Rashi's opinion over Rabbeinu Tam in regard to *tefillin*; since the overwhelming majority of *poskim* ruled in favor of Rashi, his opinion was accepted as the primary ruling (See *Beur HaGra, Orach Hayyim* 34 and *Arukh Hashulhan, ibid.* 3079). Nevertheless, even in this case, R. Yosef Karo does not set aside Rabbeinu Tam's opinion but writes that a "*yere shamayim*" should fulfill both opinions by having two sets of *tefillin* (*Orach Hayyim* 34:2).

Also in regard to *mezuzot*: R. Yosef Karo's ruling in favor of Rashi is based on the same ruling by Maimonides and also in the *Bet Yosef* he cites the Mordekhai who mentions that the "*minhag ha-olam*" and his teachers, ruled in favor of Rashi (*Bet Yosef, Yoreh De'a*, 289).

R. Yosef Karo who incorporated Rabbeinu Tam's decision into the *Shulhan Arukh* as illustrated above is accepted as the definitive decision for all of Jewry especially since it was not in any way opposed by Rema. Thus, this ruling based on all of the *poskim* favoring Rabbeinu Tam, is not

just one of *Tosafot* but of many *poskim* and to set it aside because of changing times, is unacceptable. A great halakhic authority would have to demonstrate that this ruling was based on the possibility of changing times and societies, a possibility which is most unlikely, whether in analysis and subsequent acceptance.

Rabbi Yuter mentions the *get zikkuy* as a controversial instrument "because the husband actually appoints his wife's agent to accept his *get* on her behalf, generally one may only appoint one's own agent, not the agent for another person." This statement should be corrected because one may act as an agent for another person if it is of benefit to that individual, a "*zekhut*," but not in the case of that individual's disadvantage or "*hov*." In the matter of a "*get zikkuy*," although generally speaking a *get* is considered as a "*hov*" for the woman, nevertheless if it has been established that it is a "*zekhut*" such as in the cases of apostasy and promiscuity, etc., then it is considered a "*zekhut*" and the man may appoint that agent. (See *Even HaEzer* 140:5, Rema and *Even HaEzer* 1:10, Rema). Any hesitancy on using the *get zikkuy* is based on whether the circumstances confirm the idea of *zekhut* or not.

In regard to Rabbi Yuter's reference to myself of following "a tradition which rests on the charismatic authority of gedole Torah," my response is that "charismatic" is a wrong term within this frame of reference. The concept of *emunat hakhamim* was and still is invoked in relying on certain gedole Torah for their decisions although these decisions could be disputed on the basis of rigorous analysis and logic. The oft-cited example of R. Hayyim Soloveitchik sending a very difficult case of *iggun* to R. Yitzhak Elhanan of Kovno and requesting a response by telegram whether the woman is permitted to remarry or not, without any discussion whatsoever, illustrates the trust placed in certain Torah authorities regardless of possible scholarly inaccuracies. Only *poske ha-dor* who have somehow emerged as reliable decisors will be able to make decisions of the sort described by Rabbi Yuter.

EDITOR'S NOTEBOOK

TO THE EDITOR:

Thank you for the editor's comments at the beginning of the Summer 1991 (25:4) issue of *Tradition*. I have read and reread "Dailyness and Daily Ness." It was, and continues to be, an essay of value and importance.

(RABBI) YITZCHOK ADLER
Jacksonville, Fla.

THE FIRST TALMUDIC ACADEMY
IN AMERICA?

TO THE EDITOR:

I noticed the interesting paper by my friend Dr. Shneyer Z. Leiman, "Yeshivat Or ha-Hayim: The First Talmudic Academy in America?" (*Tradition*, 22:2, Winter 1990).

This yeshiva, founded in 1885, was preceded by almost 100 years by another yeshiva in America, albeit in South America: The Yeshivah Gemillut Hasadim

existed in the independent Jewish state of "Joden Savana" in Surinam. I learned this from a personal visit to the jungle remains of the magnificent synagogue and the hundreds of ornate tombstones which can still be seen there. I read there the lengthy Hebrew tomb inscription for David Hisqiyahu Baruch Louzado, who died in 1825 and is described as *hazan*, *mohel* and "Rosh Yeshiva Gemilluth Hasadim." Also, while browsing through the artifacts found in the neighborhood of the synagogue ruin, I saw a copper cover of a large kettle bearing the initials *gimmel* and *het*, abbreviation for "Gemilluth Hasadim." This evidently came from the kitchen where the yeshiva students were fed.

The story of the Jewish state in Surinam—complete with a Jewish army and a court house—is one of the most fascinating and least known stories of Jewish American history. Yet, the existence of such an early yeshiva in this hemisphere should make us all proud.

(DR.) MANFRED R. LEHMANN
Miami Beach, Fla.

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