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## THE ROLE OF MANUSCRIPTS IN HALAKHIC DECISION-MAKING: HAZON ISH, HIS PRECURSORS AND CONTEMPORARIES

During the course of this century rabbinic scholarship has been enriched by the discovery and publication of highly significant medieval manuscripts that had heretofore languished in various libraries throughout the world. Certainly, any newly discovered sources that contribute to a keener understanding of talmudic texts or which cast light upon cognate material are to be welcomed with enthusiasm. The plethora of material does, however, prompt the investigation of one very broad issue which has many ramifications in various areas of Halakhah. At times newly uncovered manuscript data contravene accepted halakhic precedents and norms. What weight, if any, is to be assigned to material that was unavailable to the classical codifiers of Jewish law? This issue has received a significant measure of attention on the part of a number of rabbinic authorities, albeit frequently in a manner that requires further amplification and clarification.

The most authoritative and best known discussions of this topic are presented in various writings of R. Abraham Isaiah Karelitz, popularly known as Hazon Ish. The views of Hazon Ish regarding the issue have been widely disseminated and have become the subject of considerable controversy. A lengthy discussion of the view of Hazon Ish regarding the significance to be accorded to newly discovered manuscripts first appeared in the pages of *Tradition* (Summer, 1980) in an article by Professor Zvi A. Yehuda and was followed by a rejoinder authored by Professor Shnayer Leiman (Winter, 1981). However, in light of the recently published third volume of the letters of Hazon Ish (Bnei Brak, 1990) containing material that is germane to this topic, a reexamination of the position of Hazon Ish regarding this question is necessary. Moreover, since Hazon Ish's comments are scattered throughout his voluminous writings, it is not surprising that some of these remarks were overlooked in the earlier discussions. Furthermore, there is a significant body of material addressing this topic that must be culled from the writing of other scholars. Only upon analysis of this entire

corpus does a comprehensive view of the treatment of this issue by contemporary scholars emerge.

## I. NORMATIVE AUTHORITY OF *SHULHAN ARUKH*

### A. PRIMACY OF *SHULHAN ARUKH*

There can be little question that during earlier ages, prior to definitive codifications of Halakhah, early authorities were quite prepared to accord decisive weight to halakhic manuscripts of still earlier times that came to light in their own days.

The earliest reference to discrepancies between various manuscript versions occurs in the famed letter of Rav Sherira Ga'on.<sup>1</sup> Apparently, referring to discrepancies in talmudic citations of pre-talmudic written records of oral transmissions, Rav Sherira Ga'on attributes such discrepancies not to error, but to separate transcription of a common corpus by different reporters. Since he ascribes the textual variations to differences in nomenclature employed by different teachers or students, he urges that every attempt be made to reconcile the conflicting versions as reflecting different ramifications of a common thesis. In a rather strained application of R. Sherira Ga'on's comments, R. Shlomoh Yosef Zevin urges adoption of a similar approach in reconciliation of divergent talmudic texts.<sup>2</sup>

Rambam, *Hilkhoh Malveh ve-Loveh* 15:2, reports that a certain halakhic ruling recorded by the *Ge'onim* was based upon an incorrect talmudic text. Rambam recounts that he personally examined various manuscripts that had been committed to writing in Egypt some five hundred years earlier and found them to be at variance with the version followed by the *Ge'onim*. On the basis of the evidence of those manuscripts, Rambam unhesitatingly overrules the ruling of the *Ge'onim*.<sup>3</sup> Similarly, Rambam, *Hilkhoh Ishut* 11:13, disagrees with a ruling of "some *Ge'onim*" which he ascribes to an error in the manuscripts available to them and reports that he examined many ancient manuscripts and found that they supported his own view.

Ramban, in his commentary on *Niddah* 64a, presents several different methods of calculating the anticipated onset of the menses and concludes his remarks concerning the prohibition regarding cohabitation at the time that the menstrual period must be anticipated by adding that

a *ba'al nefesh* (a spiritually sensitive individual) should be careful to be stringent with regard to matters concerning the onset of menses [and refrain from cohabitation] both in accordance with our opinion and in accordance with those of earlier authorities until a spirit from on high will be showered upon us or upon others to determine conclusively which is the proper path that a

person should choose. However, if there should be found something indicative of one of these positions in the treatises of the *Ge'onim* or in their responsa, it is proper to follow [that position] and to go in their footsteps.

Ramban clearly declares that, with regard to this issue, the ruling of the *Ge'onim*, if it could be ascertained, is to be regarded as definitive. Obviously, Ramban did not himself have access to sources portraying the view of the *Ge'onim* on this matter, but indicates that, were such—presumably textual—material to become available to him, he would have regarded it as conclusive. It is, of course, possible that Ramban was prepared to accept new textual evidence with regard to that issue because, in this instance, his own position may not have been formulated in a hard and fast manner. Nevertheless, it is clear that Ramban was prepared to assign great weight to manuscripts of earlier authorities that were not part of the corpus of halakhic writings transmitted to him by his own teachers.<sup>4</sup>

These sources certainly serve to underscore the fact that, at least before final, binding halakhic determinations became universally accepted within the Jewish community, the importance of manuscript material was considerable. Any question that arises with regard to the role to be assigned to manuscript sources is limited to utilization of modern-day discoveries for purposes of overturning or modifying rulings that have been accepted as normative by virtue of incorporation in *Shulhan Arukh* or by being otherwise widely accepted within the Jewish community. Thus, for example, *Hazon Ish's* oft-cited disavowal of manuscript evidence in establishing novel halakhic decisions must be understood, not as denigration of manuscript evidence per se, but as a reflection of the relative significance to be assigned to such sources in diverse epochs of halakhic decision-making.

A number of rabbinic scholars who have expressed extreme reluctance to accept as authoritative halakhic positions based upon manuscripts at variance with the normative rulings recorded in *Shulhan Arukh* have bolstered their view with a very interesting observation. One significant source for the formulation of this consideration may be found in the comments of Hazon Ish in a letter included in his work on *Yoreh De'ah* 150:8, s.v. "*Mikhtav—a letter.*" This letter is also published in his comments on *Zera'im*, *Hilkhos Kela'im* 1:1, and is reprinted in *Iggerot Hazon Ish*, III, no. 48. In this communication Hazon Ish points out that the decisions of the *Shulhan Arukh* were not necessarily based upon the principle of majority rule. Hazon Ish rejects the principle of majority rule as a normative principle of decision-making other than in the context of a formal pronouncement by a *Bet Din*. Although Hazon Ish considers that, in practice, halakhic decisors frequently adjudicate on the basis of majority rule, he asserts that they do so solely because of their lack of personal acumen. However, a personage of the stature of the author of *Shulhan Arukh* might well have consciously and legitimately rejected a view held by the majority of scholars. Hence, discovery of additional views contradicting a position espoused in *Shulhan*

*Arukh* is a matter of little relevance. Moreover, emphasizes Hazon Ish, not all authorities published their decisions and not all published manuscripts have reached our hands. Accordingly, Hazon Ish argues, newly found manuscripts do not necessarily alter the balance of opinion with regard to any issue in controversy, for even were new opinions of *rishonim* to be uncovered, we still might not know the manner in which the majority ruled since the opinion of other *rishonim* may yet be unknown to us. But, most significantly, *Shulhan Arukh* may, indeed, have consciously ignored the hitherto unknown sources and followed a minority opinion. Mere discovery of the existence of such opinions is itself not reason to overturn the ruling of *Shulhan Arukh*.<sup>5</sup>

In order to place Hazon Ish's comment in proper context, it is instructive to consider the remarks of R. Jonathan Eibenschutz, *Urim ve-Tumim, Kitsur Tokpo Kohen* 123-124. *Tumim* raises a question concerning the role of manuscripts in adjudication of financial disputes. In financial litigation the rule is that the defendant can enter a claim of "*Kim li—I maintain the minority position*" in order to retain possession of his money, since in matters of jurisprudence, the principle of *rov*, i.e., a presumption that determination of the relevant rule is in accordance with the majority, does not pertain. If so, suggests *Tumim*, perhaps it is possible to go a step further. When new manuscripts appear in print, queries *Tumim*, why should the defendant not be entitled to argue "*Kim li—I rely upon those opinions even though they are not reflected in hitherto accepted sources*"? Furthermore, notes R. Jonathan Eibenschutz, even if it is accepted that the law is in accordance with the majority, how is it ever possible to determine which of two conflicting views was held by the majority of early authorities? Thus, for example, although, with regard to a specific matter the opinion of Rambam was recorded by him in his *Mishneh Torah*, it is entirely possible that many of Rambam's contemporaries disagreed with him with the result that his opinion was a minority one. Over the generations, persecutions and evil decrees prevented the publication of many works and other writings were never adequately disseminated.<sup>6</sup> Hence, the fact that a conflicting view was held by a majority of Rambam's peers may be unknown to us. After a lengthy discussion, *Tumim* points out that he has a *kabbalah*—a received tradition—that the scholars of the generation in which *Shulhan Arukh* was compiled accepted the rulings recorded therein as normative and binding.

Paralleling the tradition of *Tumim*, R. Chaim Joseph David Azulai, *Shem ha-Gedolim, Ma'arekhet Sefarim, Ot Bet*, no. 59 and *Birkei Yosef, Hoshen Mishpat* 25:29, records a very interesting historical fact transmitted by "aged" Torah scholars in the name of R. Chaim Abulafia. The latter authority is reported as having declared that he had received a tradition to the effect that contemporaneously with the publication of *Bet Yosef* "almost" two hundred rabbis agreed to the principle established by R. Joseph Caro that halakhic decisions are to be made on the basis of the majority of

two of the three opinions of Rif, Rambam, and Rosh.<sup>7</sup> Accordingly, since *Bet Yosef's* decisions were, in effect endorsed by two hundred contemporary authorities they perforce represent the majority view.<sup>8</sup> The point, if historically correct, is a cogent one. However, the report is limited to endorsement of *Bet Yosef's* canons of decision-making and does not serve to explain the decisive weight given to the decisions of Rema.<sup>9</sup>

*Tumim* adds the further observation that "to my mind there is no doubt" that *Shulhan Arukh* and Rema wrote with divine inspiration<sup>10</sup>

because many questions have been raised challenging them by later authorities and answered in a sharp and penetrating manner. Also they incorporated many laws with sweetness and conciseness of language, and without doubt they did not design all of this on their own for in light of the enormity of work, the work of heaven, that was incumbent upon them, how would that have been possible? And who is the man who can compose a work that encompasses the entire Torah, culled from all the words of the early-day and the latter-day authorities...? [This was possible] only because the divine spirit<sup>11</sup> reverberated within them that their language might be precise in determining the Halakhah [even] without the intent of the writer and the divine wish was successfully accomplished through their hand.

Therefore, concludes *Tumim*, one cannot substantiate a claim of "*kim li*," predicated on novel minority opinions and advancing arguments not cited in *Shulhan Arukh*. Any opinion not referred to by *Shulhan Arukh* and Rema is irrelevant insofar as halakhic decision-making is concerned.<sup>12</sup> A similar conclusion is attributed by *Tumim*<sup>13</sup> to *Havot Ya'ir*, no. 165.<sup>14</sup>

Thus Hazon Ish's views regarding manuscripts are neither innovative nor astonishing. He did not at all formulate a position *de nouveau*. Rather, the attitude expressed in his somewhat cryptic letter is a view previously expressed by eminent latter-day authorities. Halakhah was in a more fluid state as it evolved and developed prior to its codification in the *Shulhan Arukh*. Written with what R. Jonathan Eibenschutz described as divine guidance, *Shulhan Arukh* became uniquely authoritative with the result that thereafter, Halakhah lost a great measure of its earlier fluidity. Thus, it is not at all startling that, subsequent to codification of the *Shulhan Arukh*, newly discovered manuscripts are of no great significance in terms of halakhic decision-making.<sup>15</sup>

*Tumim's* point regarding the impossibility of determining a majority versus a minority view on the basis of manuscript material is reflected in an interesting controversy with regard to the use of newly discovered manuscripts concerning the question of what constitutes a "public domain" for purposes of carrying on the Sabbath. It is a fundamental principle of Sabbath law that enclosure of an open space by means of an *eruv*, or symbolic wall, renders carrying permissible only in an area in which carrying is otherwise forbidden by virtue of rabbinic edict, but is of no effect with regard to

an area that constitutes a "public domain" according to biblical law. *Shulhan Arukh, Orah Hayyim* 345:7, cites two conflicting opinions defining a "public domain" for purposes of biblical law. According to the first opinion, streets that are sixteen cubits wide and lack a roof and walls, or streets that have walls but have open gates at both ends, constitute a "public domain." According to the second opinion, an additional condition must be satisfied in order for such an area to be regarded as a public domain, namely, the area must be traversed daily by six hundred thousand people. Rema, *Orah Hayyim* 357:3, comments that, "in our day," there exists no public domain. Thus, it would appear that Rema rules in accordance with the second opinion and maintains that the presence of six hundred thousand people is a *sine qua non* of a public domain. Since, in Rema's time, that condition did not pertain even in major metropolitan areas, no locale could be described as a public domain.

*Mishkenot Ya'akov, Orah Hayyim*, no. 120, meticulously cites a list of newly found sources each of which maintains that an area may constitute a public domain even though it lacks the presence of six hundred thousand persons. *Mishkenot Ya'akov* argues that, had Rema been privy to these sources, he would not have ruled that the presence of six hundred thousand people is necessary in order to render an area a public domain. Accordingly, *Mishkenot Ya'akov* prohibits reliance upon an *eruv* even in cities that are not large enough to have a population of six hundred thousand. This position is cited as authoritative by *Arukh ha-Shulhan* 345:17<sup>16</sup> and, as a consequence, the latter authority proceeds to develop at length a novel thesis to permit *eruv* in such cities, arguing that in such cities other criteria necessary for constituting a public domain are absent.

However, in the course of a lengthy discussion, *Teshuvot Bet Efrayim, Orah Hayyim*, nos. 26-27, disagrees with the conclusion of *Mishkenot Ya'akov* and cites the earlier noted comments of *Tumim* to the effect that, regarding any controversy among early authorities, we have no way of ascertaining which position constituted the majority opinion;<sup>17</sup> rather, the Jewish community has accepted the decisions of the *Shulhan Arukh* and Rema as binding.<sup>18</sup>

Although *Mishkenot Ya'akov, Orah Hayyim*, nos. 121-122, responds at great length to the arguments of *Bet Efrayim* he fails to address this particular issue. It would appear to this writer that while, at first blush, it seems that *Mishkenot Ya'akov* disagrees with the position of *Tumim*, this is not really the case. It may be cogently argued that if an opinion is not recorded in *Shulhan Arukh*, discovery of new manuscript sources will not change the final ruling. The fact that an opinion is ignored by *Shulhan Arukh* indicates its rejection. However, if *Shulhan Arukh* quotes an opinion and deems it worthy of mention, it is possible that *Tumim* would agree that since the opinion is recognized as legitimate by *Shulhan Arukh*, albeit not followed in his own normative ruling, new sources may well serve to alter the final

determination, particularly with regard to a matter, such as that discussed by *Mishkenot Ya'akov*, which involves a host of authorities rather than an isolated source. An opinion deemed worthy of mention by *Shulhan Arukh* is one that cannot be rejected out of hand or, to use the terminology of *Tumim*, such an opinion is one that bears the sanction of divine guidance. Consequently, if it is found to be corroborated by a wide array of newly discovered sources it may assume even greater importance.

It must also be noted that *Tumim's* position appears to be self-limiting. It seems apparent that *Tumim* claims that the rulings of *Shulhan Arukh* and Rema occupy a privileged position because (1) of their universal acceptance and (2) because the divine spirit guided R. Joseph Caro and R. Moses Isserles in their codification of *Shulhan Arukh*. *Tumim* presumably does not accord similar status to the ruling of later authorities. In all likelihood, *Tumim* would concede that, insofar as later authorities whose decisions did not receive such widespread and final definitive acceptance are concerned, the information that comes to light as a result of newly found manuscript sources is not to be ignored and, accordingly, the rulings of those later authorities may be disputed on the basis of such manuscripts. However, as will be discussed below, R. Moshe Sternbuch, *Mo'adim u-Zemanim*, IV, no. 274, extends this concept even to later authorities.<sup>19</sup>

A similar position to that propounded by *Tumim*, but based upon a somewhat different premise, may be deduced from a well-known anecdote related in the name of R. Joseph Baer Soloveitchik, *Bet ha-Levi*, by his great-grandson, Rabbi Joseph B. Soloveitchik.<sup>20</sup> The *Rebbe* of Radzhin claimed to have found the blue dye necessary for use in the manufacture of *tekhelet* for *tsitsit* and to have conclusive proof that this dye was indeed the *tekhelet*. Nevertheless, *Bet ha-Levi* refused to sanction use of the dye. He maintained that the Torah bids us "Ask your father, and he will tell you, your elders, and they will say unto you" (Deuteronomy 32:7).<sup>21</sup> Although, strictly speaking, the anecdote reflects a narrow point of Halakhah, namely, that the denotation of any biblical term can be established only upon the basis of a *mesorah*, the underlying concept is much broader in nature. All novel halakhic decisions require a *mesorah*, a tradition that is authoritatively transmitted. When such tradition is lacking, halakhic argumentation and dialectical proofs are insufficient.

It may well be argued that previously unpublished responsa containing halakhic decisions that are absent in *Shulhan Arukh*, and which did not become part of the *mesorah*, are lacking the halakhic authority conveyed by the process of "Ask your father and he shall tell you, your elders and they will say unto you." Although this contention is not entirely identical with the reasoning of *Tumim*, nor is it articulated by Hazon Ish in explicit terms, it may quite well explain the reason why serious halakhic decisors and *poskim* assign relatively little weight to new manuscript material, even when the material is known to have been authored by recognized and

authoritative scholars. To be significant for purposes of halakhic decision-making and *psak*, acceptance by *klal Yisra'el* throughout the millennia and consequent incorporation into the *mesorah* is a *sine qua non*.

## B. CONFLICTING VIEWS

It is, however, by no means the case that all authorities accord a privileged position to the rulings of *Shulhan Arukh* insofar as new manuscript evidence is concerned.<sup>22</sup> In a discussion of the laws concerning sale of *hamets* to a non-Jew, *Shulhan Arukh ha-Rav, Orah Hayyim* 448:12,<sup>23</sup> states that in order for the sale to be valid in a manner that satisfies all opinions it is not sufficient for the non-Jew simply to make a down payment or to deliver a token sum as the purchase price and to allow the balance of the amount due as payment for the *hamets* to remain a debt. Rather, the non-Jew must either pay the full purchase price of the *hamets* or he must provide a guarantor (*arev kablan*), who accepts responsibility on behalf of the non-Jew for payment of the outstanding sum in the event that the non-Jew is unable or unwilling to pay the full amount himself. *Shulhan Arukh ha-Rav* reiterates this position in the section of his *siddur* dealing with the laws of the selling of *hamets*.<sup>24</sup> In the latter source he spells out the reasoning underlying this position, namely, that, in order to be valid, a transfer of property in return for consideration requires payment of the entire sum stipulated as the purchase price. The standard text for the sale of *hamets* customarily includes a stipulation stating that the down payment constitutes the purchase price in its entirety while any additional payment is assumed as an ordinary debt. Nevertheless, *Shulhan Arukh ha-Rav* asserts that, according to the opinion of some prominent early-day authorities, this arrangement is not acceptable.

In formulating that position, *Shulhan Arukh ha-Rav* reports that "it is well-known in the portals of Halakhah that many of the manuscripts of the *rishonim* were not yet printed even during the lifetime of the *aharonim*, of blessed memory, i.e., the *Taz*, the *Magen Avraham* and those that followed them. [They were not published] until recently, close to our own generations, as can clearly be seen to be the case with regard to the work of the *Shitah Mekubetset* on various tractates and similar works. Accordingly, one assuredly should not rely for leniency in practice upon the permissive positions that are found in the works of the *aharonim*, of blessed memory, particularly with regard to a serious biblical prohibition such as *hamets*, regarding which the Torah established stringencies, [viz., the] prohibitions of "*bal yera'eh*" and "*bal yimatseh*" (i.e., the dual prohibitions "it may not be seen" and "it may not be found").

*Shulhan Arukh ha-Rav* does not identify the early-day authorities to whom he refers. In his *Teshuvot She'erit Yehudah, Orah Hayyim*, no. 10, R.



Yehudah Leib, a brother of the author of the *Shulhan Arukh ha-Rav*, analyzes and amplifies his distinguished brother's position at great length. *Shulhan Arukh, Hoshen Mishpat* 190:10, rules that, if a purchaser makes partial payment for an object, title transfers immediately unless the seller demands the entire payment forthwith (*nafak ve-ayal azuzei*). Rema, in a gloss, *ad locum*, adds that, if the purchaser makes partial payment and explicitly accepts the remainder of the amount as a binding debt (*zakav alav be-milveh*), the sale is consummated even if the seller subsequently demands immediate payment.

*She'erit Yehudah* points out that *Shitah Mekubetset, Baba Metsi'a* 77b, cites a ruling of *Teshuvot ha-Rif* to the effect that even though the remainder of the purchase price is accepted as a debt, if the seller subsequently demands payment in full and such payment is not forthcoming, the sale may be rescinded by the seller. *She'erit Yehudah* asserts that it is this ruling of *Teshuvot ha-Rif*, as cited in *Shitah Mekubetset*, to which *Shulhan Arukh ha-Rav* refers. *She'erit Yehudah* maintains that the designation of a guarantor serves to validate the sale in such circumstances even according to the opinion of *Teshuvot ha-Rif*.<sup>25</sup>

Thus, *Shulhan Arukh ha-Rav* was prepared to accept the material found in new manuscripts even when halakhic positions contained therein differ from the rulings of *Shulhan Arukh*. It is important to note, however, that, in this instance, the novel position reflected in the manuscript material necessitated a halakhic revision in the nature of a stringency. It does not necessarily follow that *Shulhan Arukh ha-Rav* would have been prepared to accept a leniency based upon new manuscript evidence contrary to the ruling of *Shulhan Arukh*.

R. Moshe Sternbuch, *Mo'adim u-Zemanim*, IV, no. 274, affirms the primacy of the rulings incorporated in *Shulhan Arukh* in explaining why the stringent position of *Shulhan Arukh ha-Rav* with regard to sale of *hamets* was not accepted. Following a detailed analysis of the position of *Shulhan Arukh ha-Rav*, Rabbi Sternbuch notes that since *Shulhan Arukh, Hoshen Mishpat* 190:10, contradicts the view of *Shulhan Arukh ha-Rav*, the ruling of *Shulhan Arukh* must be followed even though it appears to be contradicted by new manuscript evidence. Rabbi Sternbuch declares:

... for we have received a tradition from the great Torah authorities of the [preceding] generations, of blessed memory, that the rulings of the *Shulhan Arukh* are not changed as a result of discovery of manuscripts, even those authored by the great early-day scholars. Their reason may be explained as follows: The Holy Spirit shined forth in the house of study of the author of the *Shulhan Arukh* and the acknowledged decisors according to whose rulings all of the house of Israel conducted themselves for many generations.<sup>26</sup> Accordingly, it is incumbent upon us to continue in their path, even if we now find manuscripts of some early-day authorities whose path is not the same.

It is noteworthy that the view herein expressed by R. Sternbuch is virtually identical with that formulated by *Tumim* as cited earlier.<sup>27</sup> However, R. Sternbuch broadens this concept to encompass not only the rulings of *Shulhan Arukh* and Rema but also the rulings of other later-day preeminent halakhic decisors<sup>28</sup> whose decisions have been accepted as binding by *klal Yisra'el* over the generations.<sup>29</sup>

A sharply different attitude is manifested by R. Jacob Ettlinger. R. Jacob Ettlinger, author of several volumes of talmudic novellae entitled *Arukh la-Ner* and of a responsa collection entitled *Binyan Tsion*, accepted material found in previously unpublished manuscripts as authoritative even in instances in which the rulings therein were at variance with those of *Shulhan Arukh*. In *Binyan Tsion*, no. 69, R. Ettlinger discusses the remarks of Rabad, *Ba'alei ha-Nefesh, Sha'ar ha-Perishah*, in which Rabad cites a comment of Rav Hai Ga'on concerning regulations pertaining to a bride following consummation of her marriage. Rabad reports that Rav Hai records that, following the initial act of intercourse, the halakhic status of a virgin bride is that of a *niddah*, i.e., a menstruant woman who is required to count a period of seven days in which she is free of all bleeding and to immerse herself in a *mikveh* before resuming marital relations with her husband, but adds the comment that the bed upon which the bride sleeps or reclines is not rendered impure since her status as a *niddah* is merely doubtful. Rabad questions the relevance of the latter statement since the laws of purity and impurity have no application in our day.

Rabad proceeds to explain Rav Hai Ga'on's comment in the following manner. Rabad maintains that if a woman is definitely a *niddah*, her husband may not sleep on her bed even when she does not also occupy the bed. However, this stricture is limited to the case of a woman who is a "certain" *niddah*. Since a bride, upon consummation of her marriage, is not a "certain" *niddah*, the husband is not restricted from lying upon her bed. Thus Rabad explains Rav Hai's reference to the "impurity" of the bed as referring to restrictions upon utilization of the bed based upon prohibited forms of familiarity with a menstruant wife rather than as a reference to ritual defilement of the bed. Rabad concludes his comments with the statement that even though this leniency is not a practice for which support from earlier sources can be adduced (*eino min ha-halakhah*), it is nevertheless to be considered among those matters that "*ha-da'at makhra'at aleihem—wisdom determines their acceptance.*" Rabad's analysis of Rav Hai Ga'on's position is accepted as authoritative by Rosh, *Niddah* 10:2, and *Shulhan Arukh, Yoreh De'ah* 193:1.

R. Jacob Ettlinger points out that a quite different interpretation of the opinion of Rav Hai can be given based on the geonic responsa that had been published only a short time previously. *Teshuvot ha-Ge'onim, Sha'arei Teshuvah* (Leipzig, 1858), no. 5, declares that, in an epoch in which the laws of ritual purity were a matter affecting daily life, the ritual purity associ-

ated with objects with which a *niddah* came into contact was a matter of great importance and had ramifications in aspects of daily life. *Teshuvot ha-Ge'onim*, explains that, in order to memorialize those practices and in order that the laws of ritual purity not be entirely forgotten, the custom arose for all persons—not just the husband of the menstruant woman—to avoid reclining upon the bed of a *niddah*. Rabbi Ettlinger recognizes that, insofar as this custom is concerned, since it is merely commemorative in nature, the practice of reclining upon the bed of a *niddah* is limited to instances in which the woman is a certain *niddah*.

Nevertheless, R. Jacob Ettlinger argues that, according to the explanation of the origin of the custom recorded in *Teshuvot ha-Ge'onim*, there is no basis for a distinction between a woman who is definitely a *niddah* and a virgin bride insofar as restrictions devolving upon the husband are concerned. Although the practice for others not to recline upon the bed of a *niddah* is merely a commemorative custom, the restriction placed upon the husband is regarded by Rav Hai as a matter of Halakhah. As is evident from the text of Rav Hai Ga'on's responsum published in *Teshuvot ha-Ge'onim*, *Sha'arei Teshuvah*, no. 168, Rav Hai Ga'on understood the restriction imposed upon a bride subsequent to the initial act of intercourse as predicated upon a concern that the emotional impact of the experience might cause actual menstrual blood to flow. Accordingly, concludes Rabbi Ettlinger, since the woman must be treated as a possible *niddah*, as a matter of Halakhah, the husband is forbidden to recline upon her bed.

R. Jacob Ettlinger endeavors to demonstrate that Rosh was unaware of this particular responsum of the *Ge'onim*<sup>30</sup> and, as a result, both Rabad and Rosh misunderstood Rav Hai Ga'on's statement regarding the distinction to be made between a woman who is definitely a *niddah* and a woman whose status is doubtful. Since the author of *Shulhan Arukh* based himself upon Rabad and Rosh's erroneous understanding of Rav Hai Ga'on, the ruling codified in *Yoreh De'ah* 193:1 is incorrect. In consonance with this view, R. Jacob Ettlinger rejects the ruling of *Shulhan Arukh* and declares that a husband may not sit on his wife's bed even when, as a bride, she becomes a "doubtful" *niddah*.

It is thus clearly evident that R. Jacob Ettlinger was prepared to reject a ruling of *Shulhan Arukh* on the basis of newly published manuscript evidence even though the matter at issue was only rabbinic in nature.<sup>31</sup>

Nevertheless, it does not follow that this case serves as a paradigm for all other cases, even with regard to stringencies. The matter with regard to which R. Jacob Ettlinger was prepared to reject the ruling of *Shulhan Arukh* involved establishing the original—and accurate—version of a statement relied upon by *Shulhan Arukh*. It does not necessarily follow that R. Ettlinger would accept new sources that disagreed with a ruling of *Shulhan Arukh* in instances in which that primary source was consciously rejected by *Shulhan Arukh*. R. Jacob Ettlinger may not have been willing to ascribe a ruling

shown to be based upon an errant transmission to a “divine spirit” but may, nevertheless, have accepted the principle that normative Jewish law rejects any position formally rejected by *Shulhan Arukh* as being outside the pale of the *mesorah*.

It is instructive to note that R. Ettlinger’s decision in contravention of the ruling of *Shulhan Arukh* did not gain wide acceptance among rabbinic scholars. However, the reason for the lack of support for *Arukh la-Ner*’s view may well be unconnected to the fact that he ruled upon manuscript evidence which other *poskim* refused to accept as authoritative. Rather, as has been correctly pointed out by R. Ovadia Yosef, *Taharat ha-Bayit*, I, 501, Rabad concludes his comments explicating Rav Hai Ga’on’s position with the observation that this ruling is a matter mandated by reason (*ha-da’at makhra’at aleihem*). Thus, even if Rabad misinterpreted Rav Hai Ga’on’s comments, the conclusory ruling was viewed by Rabad as logically mandated and was adopted by Rabad as his own opinion—even though, in reality, it may have been at variance with Rav Hai Ga’on’s view. Accordingly, those authorities may well have concluded that it was Rabad’s independent decision that was relied upon by Rosh and *Shulhan Arukh* (rather than the opinion of Rav Hai Ga’on) which became normative Halakhah.

It must also be stressed that the instances in which both *Shulhan Arukh ha-Rav* and *Binyan Tsion* disagree with rulings of *Shulhan Arukh* on the basis of new manuscript evidence involve matters in which the new manuscript evidence leads to a stringency (*le-humra*). It cannot be deduced from those discussions that these authorities would have accepted new manuscript data for purposes of establishing a leniency (*le-kula*).

There is some ambiguity with regard to whether *Shulhan Arukh ha-Rav* would have been prepared to posit a stringency based upon manuscript evidence with regard to a rabbinic prohibition or whether his consideration of manuscript material was limited to matters pertaining to biblical prohibitions. In his comments on the *siddur*, *Shulhan Arukh ha-Rav* emphasizes that “one should not rely on leniencies of latter-day authorities with regard to *hamets*, especially with regard to a grave matter that is prohibited in the Torah with the prohibitions of *bal yera’eh* and *bal yimatseh*.” Although *Shulhan Arukh ha-Rav* employs the word “especially” (*u-be-frat*) which may imply that he would maintain the same opinion even if the prohibition were rabbinic in nature, nevertheless, he does not record an explicit statement to that effect with regard to a rabbinic prohibition.<sup>32</sup> The comments of *Binyan Tsion*, however, make it abundantly clear that R. Jacob Ettlinger was prepared to accept new manuscript evidence even with regard to a stringency pertaining to matters that are rabbinic in nature.<sup>33</sup>

## II. POSSIBILITY OF SCRIBAL ERROR

In another comment Hazon Ish does declare manuscripts to be outside the received corpus of the *mesorah*, but for a more limited reason. *Hazon Ish*, *Eruvin* 67:12, seeks to deduce a halakhic concept from a statement of Rabbenu Hananel. However, in a parenthetical comment, Hazon Ish adds that the remarks of Rabbenu Hananel were incorporated in the Vilna edition of the Talmud on the basis of a manuscript text and that he “does not know” whether one can rely on such newly discovered texts. Hazon Ish writes:

I do not know whether it is possible to rely on [works that are] newly printed since the *mesorah* has been interrupted among us and we do not know the identity of the copyists, for the work of copying is very difficult. Even when carried out by persons who are alacritous and meticulous many textual errors are commonly found. And if it transpires that there is even a slight laxity in scrutiny the [meaning of the] entire matter can be totally changed. Therefore, we must deem the words of the authorities from whom the transmission of the *mesorah* to us was not interrupted throughout all the generations, and whose works were guarded assiduously by the scholars of each generation to preserve them and to correct them, to be more accurate. All the more so, it is difficult to rely upon any new text in instances in which it is not possible to make a determination on the basis of the import of the text but rather on the basis of inference from its terminology.

Errors in transcription and copying are frequent and common. In the introduction to his *Hebrew Manuscripts: A Treasured Legacy* (Cleveland and Jerusalem, 1990), Binyamin Richler discusses some of the difficulties involved in the transcription of manuscripts and texts. He astutely remarks:

It is almost impossible to copy a written text of moderate length without making at least a few errors. Even if a scribe were to copy a 300-page book containing 100,000 words with 99.5 percent accuracy, he would still be responsible for 500 mistakes throughout the book. In practice, few scribes approach such accuracy. The possibilities for error are immense: the script in the original may be smudged or illegible; two lines a few inches apart might begin or end with the same word, and the scribe might inadvertently skip from one line to another, omitting the text in between; the scribe may be a layman ignorant of the subject matter he is copying and, encountering an unfamiliar word, may copy it incorrectly; a scribe may incorporate into the text critical notes written on the margin even though they were never written by the author; an assistant to the scribe who reads the text next to him might substitute homonyms of similar-sounding words.<sup>34</sup>

According to Hazon Ish, standard works must be regarded as having a high degree of reliability because basic texts that have been in use by the

community of scholars over a period of generations have undergone rigorous scrutiny and errors in the text have been noted and corrected whereas newly found material has not been subjected to similar intensive scrutiny by a large number of scholars. Hence, such texts cannot be relied upon implicitly, particularly in cases in which one is engaged in deductive analysis based on nuances in the phraseology employed in the text. In contradistinction, the published versions of Rashi and *Tosafot*, for example, have been subjected to painstaking study and correction, most notably in the glosses of *Bah* and the comments of Maharsha, Maharshal and Maharam. Similarly, the writings of early *poskim*, such as Rosh and Mordekhai, have been textually emended by *Bet Yosef* and by subsequent commentators on the *Shulhan Arukh*.

The impact of this latter argument is significant in assessing the reliability of the text of any particular manuscript. There are times when manuscripts serve to resolve discrepancies between conflicting texts. If a ruling recorded by *Shulhan Arukh* were found to be based upon an earlier disputed version of a particular text of a work authored by an early authority and a new version of that work were now to become available on the basis of which it becomes abundantly clear that one of the disputed interpretations of the text is indeed correct, it may be argued that Hazon Ish might well accept that manuscript source as dispositive. However, were the new manuscript not to be entirely explicit and unequivocal in support of a particular interpretation, but instead was found to be cryptic and concise in its statement, Hazon Ish would not have accepted the new manuscript text as definitive because, since the text had not been scrutinized over the ages, there exists a significant possibility of textual inaccuracy that might affect halakhic conclusions to be drawn from the text.

Rabbi Yechiel Ya'akov Weinberg, *Seridei Esh*, III, no. 33, secs. 5-6, discusses a difficulty found in a statement recorded in Rabbenu Tam's *Sefer ha-Yashar*. Rabbi Weinberg declares that in order to arrive at a proper understanding of the passage in question it is necessary to emend the text of that work. He then proceeds to offer two possible interpretations, each of which presupposes a variant textual rendering. Rabbi Weinberg points out that various early-day scholars understood the statement found in *Sefer ha-Yashar* in diverse ways. He suggests that they may have disagreed as to the manner in which the text must be emended in order to make it comprehensible and that their conflicting interpretations follow from the manner in which they emended the text. Nevertheless, cautions Rabbi Weinberg, this analysis is speculative and, in the absence of manuscript evidence, it cannot be demonstrated conclusively. However, he hastens to add, it is quite possible that the *rishonim* were in possession of earlier, more accurate manuscripts of *Sefer ha-Yashar* in which the language was more explicit and unequivocal. In that comment, *Seridei Esh*, makes essentially the same observation as did Hazon Ish, *Eruvin* 67:12, namely, that, in the process of

copying and recopying over a period of centuries, textual errors crept into manuscripts. The more obscure the manuscript, the greater the likelihood that such textual errors were not spotted and corrected.

The same point is again made by Rabbi Weinberg in *Seridei Esh*, III, no. 127, sec. 18. Rabbi Weinberg cites a discussion of *Hemdat Yisra'el* in which that scholar deduces a novel halakhic ruling from the comments of *Yad Ramah* in his commentary on *Sanhedrin* 72b. *Hemdat Yisra'el* raises a question based upon a talmudic passage that contradicts *Ramah's* comments and resolves the problem in a manner that Rabbi Weinberg deems to be unsatisfactory. Rabbi Weinberg comments:

It is well known that, in previous times, those who published the works of early scholars were not very meticulous and did not go to any trouble to find other manuscripts by means of which they would have been able to preserve the works from gross errors. It is not profitable to enter into involved explanations solely in order to resolve what are really the errors of writers and copyists of books. . . . Far be it from us to formulate novel rulings on the basis of corrupt manuscripts or on the basis of errors that were introduced into them by unworthy copyists or publishers.

Elsewhere, in his "Hiddushim u-Bi'urim," appended to *Seridei Esh*, III, 408, Rabbi Weinberg strongly urges publication of critical editions of the works of *rishonim*. He notes that newly discovered manuscripts contain numerous variant readings, many of which serve facily to dispel perplexing difficulties that have engaged the attention and intellectual prowess of scholars over a span of centuries. Examination and study of such manuscripts is described by Rabbi Weinberg as "obligatory . . . in order to establish the investigation of Talmud and halakhah upon a strong scientific foundation as it was understood by the great scholars of previous generations such as our great teacher, the Gra, of blessed memory."

Rabbi Moshe Feinstein draws attention to the fact that, at times, it is the newly discovered manuscript that contains egregious errors. In discussing new manuscript data which he found to be perplexing, R. Moses Feinstein dismisses the material as being the interpretation of a "non-proficient student" (*talmid to'eh*). In *Iggerot Mosheh, Even ha-Ezer*, I, no. 63, sec. 6, R. Feinstein points out that his own analysis of the position of Rosh, as recorded by Rosh in three different passages, is at variance with the comments recorded in *Tosafei ha-Rosh, Niddah* 3a. Rabbi Feinstein notes that *Tosafei ha-Rosh* on tractate *Niddah* were not published until recent times (in the 19th century by *Hemdat Shlomoh*) and consequently he insists that, whenever that work contradicts earlier published writings of Rosh, *Tosafei ha-Rosh* should be disregarded insofar as halakhic decision-making is concerned. Rabbi Feinstein adds that, in the particular matter under discussion, were but one word in the published text of *Tosafei ha-Rosh* to be emended, the statement would be compatible with the position of Rosh as recorded

elsewhere. However, he concludes his own analysis, not with insistence upon the suggested emendation, but with an expression of his own conviction that this passage did not emanate from the pen of Rosh but rather from that of a non-proficient student.

In light of the historical veracity of the previously cited comments of Hazon Ish stating that accurate versions of obscure manuscripts were not preserved throughout the ages, Rabbi Feinstein's conclusions regarding the statements found in *Tosafot ha-Rosh* are hardly novel. It is not at all far-fetched to assume that the text of *Tosafei ha-Rosh* was corrupted by scribal error. One might suggest emendation of a single word in *Tosafei ha-Rosh* without undue trepidation, especially when such an emendation would lead to a reconciliation of *Tosafei ha-Rosh* with the opinion of Rosh as announced in at least three different comments. Such reconciliation of the texts is mandated, not only by canons of halakhic decision-making, but also by the accepted methodology of critical scholarship.

This is not the sole instance in which Rabbi Feinstein declares that a newly published manuscript reading that is at variance with his opinion is the interpolation of a non-proficient scholar. In *Iggerot Mosheh, Yoreh De'ah*, II, no. 7, Rabbi Feinstein endeavors to substantiate and to amplify his previously declared position (as recorded in *Iggerot Mosheh, Yoreh De'ah*, I, no. 3) with regard to the question of whether or not a non-Jew receives heavenly reward for performance of *mitsvot*. It is Rabbi Feinstein's opinion (which has by no means been universally accepted) that non-Jews do not receive compensation for performance of *mitsvot*. An interlocutor presented Rabbi Feinstein with compelling evidence to the contrary and noted that from the remarks of Radbaz, *Hilkhhot Melakhim* 10:10, and Me'iri, in his commentary to *Sanhedrin* 59a, it is evident that both authorities maintain that a non-Jew does indeed receive a heavenly reward for fulfillment of *mitsvot*. In his reply, Rabbi Feinstein dismisses those sources out of hand in stating that since, to his way of thinking, the position of Me'iri and Radbaz is incorrect, one must assume that the statements attributed to them were recorded by non-proficient scholars and, consequently, "we are not responsible for material found in newly published manuscripts." It is abundantly clear that Rabbi Feinstein assigned no importance to material found in newly discovered manuscripts that he considered to be problematic. Moreover, it must be emphasized, in the second instance, dealing with the question of whether or not non-Jews receive heavenly reward for performing *mitsvot*, the matter under discussion is one of theoretical scholarly speculation rather than a matter requiring a concrete halakhic ruling. Indeed, Rabbi Feinstein himself notes the absence of any practical ramification arising from that issue. Rabbi Feinstein's refusal to give credence to new manuscript data was purely a matter of intellectual conviction.<sup>35</sup>

There are yet other circumstances in which it would appear that scribal error can be discounted and hence, according to this thesis, manuscript



evidence would be entirely acceptable. There are instances in which a source has been cited at some length by numerous early authorities but the text of the primary source was unavailable or existed only in an incomplete version. If a manuscript version of such a work were to be uncovered and prove to be congruent with the work as cited by early authorities, the new and more complete text should be accepted as reliable with regard to hitherto unknown details since it has, in effect, been corroborated by the evidence of tradition transmitted over the generations.<sup>36</sup>

An example of such a phenomenon may be found in the newly published manuscript edition of Rabad's *Ba'alei ha-Nefesh*. Rabad's work has always been well known and widely cited. There has also been a degree of ambiguity with regard to some matters which become clarified on the basis of this manuscript. This may be illustrated by one particularly significant example.

Sexual relations are forbidden even before the onset of a woman's menstrual flow during the day or the night on which the menstrual flow is anticipated. If the anticipated onset of the menses is prior to sunrise the couple must abstain the entire night and if the anticipated onset is before sunset they must abstain during the entire day. But in a situation in which a woman is uncertain as to whether her previous menstrual flow commenced before or after sunrise on a given day, Rosh, *Niddah* 9:2, quotes Rabad as declaring that some early authorities maintain that the woman must take cognizance of both possibilities and must anticipate that the menstrual cycle may commence either during the day or during the night; accordingly, the couple must abstain from conjugal relations for a full twenty-four hour period. Rosh further states that Rabad's own opinion is that, since abstinence prior to the onset of the menses is required only by virtue of rabbinic edict, the doubt may be resolved in favor of leniency with the result that abstinence is required only during the day. Rabad's opinion is accepted as authoritative by *Shulhan Arukh*, *Yoreh De'ah* 184:4. Hatam Sofer, in his glosses to *Shulhan Arukh* 184:8-9, notes that the published text of Rabad's *Ba'alei ha-Nefesh* contradicts Rosh's report of Rabad's position. According to the standard published version of *Ba'alei ha-Nefesh*, Rabad agrees that one must be wary both by day and by night. Hatam Sofer explains this discrepancy with regard to Rabad's position by asserting that both Rosh and *Shulhan Arukh* relied upon a corrupt text of Rabad's *Ba'alei ha-Nefesh*. Accordingly, Hatam Sofer's own position is contrary to that of *Shulhan Arukh* and in accordance with the published editions of *Ba'alei ha-Nefesh*.<sup>37</sup> To be sure, Hatam Sofer also advances other reasons substantiating his disagreement with the ruling of *Shulhan Arukh*. Nevertheless, Hatam Sofer appears to regard the textual issue as sufficiently weighty, in and of itself, to resolve the issue.

Rabbi Shmuel ha-Levi Vosner, *Shevet ha-Levi*, V, no. 103, secs. 5 and 7, and *Shi'urei Shevet ha-Levi: Hilkhos Niddah* (Bnei Brak, 1986), p. 26,

notes that newly published editions of Rabad's *Ba'alei ha-Nefesh* include glosses authored by *Ba'al ha-Ma'or* and that *Ba'al ha-Ma'or* reports that Rabad originally maintained that intercourse was prohibited for a full twenty-four-hour period but that he subsequently reversed his position and ruled that abstinence is required only during daylight hours. The newly published version is entirely consonant with Rabad's position as cited by Rosh and *Shulhan Arukh*. Consequently, Rabbi Wosner rejects Hatam Sofer's assessment of Rabad's position and rules in accordance with *Shulhan Arukh*. Significantly, the text of Rabad as it appears in the Kapah edition of the *Ba'alei ha-Nefesh* is in conformity with the report of *Ba'al ha-Ma'or* regarding Rabad's final ruling.<sup>38</sup> Here, then, is an instance in which new manuscript evidence serves to resolve a discrepancy perceived by earlier scholars and to confirm one of two conflicting positions regarding a contested issue of Halakhah. Acceptance of manuscript evidence in such instances is entirely in conformity with Hazon Ish's thesis.<sup>39</sup>

Moreover, it would appear that newly discovered texts of previously published responsa of latter-day authorities whose authenticity and provenance are not subject to dispute and which in all likelihood have not been copied and transcribed repeatedly with resultant enhancement of the likelihood of copyists' errors would have been deemed valuable and authoritative by Hazon Ish. Responsa authored after the codification of the *Shulhan Arukh* have not been formally incorporated in the transmitted *mesorah* and are not "divinely guided" in a manner comparable to the redaction of the *Shulhan Arukh*. Hence, although the newly republished commentaries of Me'iri might, arguably, be dismissed since the text of Me'iri has not been definitively authenticated by the *mesorah* and rulings of Me'iri are rarely cited by *Shulhan Arukh*, this dismissive argument would not apply to an authority such as R. Solomon Luria whose works, *Teshuvot Maharshal* and *Yam shel Shlomoh*, were not disseminated before publication of the *Shulhan Arukh*. Professor Leiman, observes that, in one instance, Hazon Ish ruled in accordance with the opinion of Maharshal and rejected the variant view of other latter-day authorities on the grounds that those authorities did not have Maharshal's work available to them.<sup>40</sup> One may, however, not deduce that Hazon Ish accorded such weight to manuscripts dating from an earlier era. It is precisely for that reason that Hazon Ish refused to assign similar significance to the newly published editions of Me'iri and *Otsar ha-Ge'onim*.<sup>41</sup>

Acceptance of the authority of newly discovered manuscripts known to have existed, but which were lost to us for centuries, is fully consistent with Hazon Ish's position. A new edition of Rashba's *Torat ha-Bayit* was published under the editorship of Rabbi Moshe Hershler. In his introductory comments to the sections *Sha'ar ha-Mayim* and *Bet ha-Mayim*,<sup>42</sup> Rabbi Hershler notes that latter-day authorities did not have access to these significant sections of Rashba's work as evidenced by the comments of *She'elot*

*u-Teshuvot Hatam Sofer, Yoreh De'ah*, no. 211. He further attests that it has been reported in the name of Hazon Ish that he accepted *Sha'ar ha-Mayim* as the authentic work of Rashba. It is claimed that Hazon Ish maintained that *Sha'ar ha-Mayim* must be unreservedly accepted as the work of Rashba since Rivash, Tashbats and *Bet Yosef* all attest to this fact. Although oral statements cannot be taken as conclusive evidence, this statement appears to be fully consistent with Hazon Ish's written views concerning manuscripts. Citation of *Sha'ar ha-Mayim* by early-day scholars establishes Rashba's authorship of that work. The very fact that the work was unavailable for such a long intervening period indicates that few copies were extant and thus there was little opportunity for proliferation of copyists' errors. Accordingly, the newly published work of Rashba might well have been accorded halakhic significance by Hazon Ish even with regard to halakhic rulings made on the basis of inferences gleaned from the text.

### III. AUTHENTICITY OF MANUSCRIPTS

A major problem raised by the proliferation in the publication of manuscripts involves the need for proper authentication of the documents if they are to be accorded any significance. It is interesting to note that, in recent times, doubts regarding authorship and attribution have been raised among rabbinic scholars with regard to a number of works of early authorities that for centuries had been accepted as authentic. R. Akiva Eger, *Gilyon ha-Shas, Nazir 2a*, cites R. Chaim Joseph David Azulai, *Shem ha-Gedolim, Ot Shin*, who quotes a statement of *Yad Malakhi* to the effect that a work commonly accepted as the commentary of Rashi on the tractate *Nazir* is in fact not the work of that authority.<sup>43</sup>

In a similar vein, R. Zevi Hirsch Chajes, *Maharats Hayes, Ta'anit 2a*, points to a contradiction between the comments of Rashi in his commentary to *Sanhedrin 113a* and his comments on *Ta'anit 2a* and declares categorically that the consensus of scholarly opinion is that the commentary on *Ta'anit* attributed to Rashi did not emanate from the pen of Rashi. In dismissing the difficulty in question, *Maharats Hayes* states that the contradictory comments clearly demonstrate that the commentary of *Ta'anit* was the work of a student of Rashi.<sup>44</sup>

The modern-day classic commentary on *Yevamot*, *Kovets he-Arot*, authored by Rabbi Elchanan Wasserman, is prefaced by a page entitled "*Yedi'ot Nikhbadot*" (important information). In one of those comments, Rabbi Wasserman demonstrates that several commentaries included in published editions of the Talmud as glosses on margins of the pages of the text have been mistakenly attributed to the wrong authors. For example, he points out that the commentary known as *Tosafot Ri ha-Zaken* on the tractate *Kiddushin* could not, in actuality, be the work of Ri who was one of the

Tosafists.<sup>45</sup> Rabbi Wasserman notes that the commentary of Rabbenu Gershon on *Baba Batra* is not the work of the famed Rabbenu Gershon Me'or ha-Golah, but rather was composed by a certain Rabbi Elyakim ha-Levi. Rabbi Wasserman further points out that a significant number of responsa attributed to Rashba were actually authored by other *rishonim*, most notably, Maharam of Rothenburg.<sup>46</sup> Based upon this premise, Rabbi Wasserman resolves a contradiction in Rashba's statements noted by R. Akiva Eger, *Teshuvot R. Akiva Eger, Mahadura Tinyana*, no. 44. Similarly, Rabbi Wasserman declares that the commentary on tractate *Sukkah* attributed to Rashba is not the work of Rashba himself, but is a commentary authored by Ritva, who was a disciple of Rashba.<sup>47</sup> Accordingly, Rabbi Wasserman resolves a contradiction in the writings of Rashba noted by *Avnei Milu'im*, *Even Ha-Ezer* 28:60, by declaring the presumed contradiction to be apparent rather than real. Moreover, Rabbi Wasserman expresses surprise that *Avnei Milu'im* was not aware of this elementary, fundamental fact regarding the provenance of Rashba on *Sukkah*.<sup>48</sup>

Rabbi Wasserman also demonstrates that what have been commonly accepted as the novellae of Rashba (*Hiddushei ha-Rashba*) on the tractate *Ketubot* were, in fact, authored by Ramban. That work was attributed to Ramban at a much earlier time by R. Chaim Joseph David Azulai, *Shem ha-Gedolim, Ma'arekhet Gedolim, Ot Mem*, no. 162.<sup>49</sup> He further claims that Rabbi Aaron Kotler, who was then Rosh Yeshiva of Kletsk, had independently reached the same conclusion and had marshalled evidence in support of that finding. Moreover, R. Iser Zalman Meltzer, who published a revised and annotated edition of *Hiddushei ha-Ramban* (Jerusalem, 1928), concurred in the view that the *Hiddushei ha-Rashba* on *Ketubot* were authored by Ramban. In his preface to *Hiddushei ha-Ramban*, Rabbi Meltzer stated that, if not for the great expense involved, he would have included the *Hiddushei ha-Rashba* on *Ketubot* in his new edition of *Hiddushei ha-Ramban*. Since he failed to do so, he indicated his wish to emphasize and underscore in his prefatory remarks, his conviction that the novellae on *Ketubot* erroneously attributed to Rashba are definitely the work of Ramban.<sup>50</sup>

Rabbi Wasserman further asserts that what has been considered to be the commentary of Rashba on the tractate *Menahot* is also not the work of Rashba himself and that the identity of the real author of this work remains a matter of dispute.<sup>51</sup> *Hafets Hayyim* maintained that this work, attributed to Rashba, is in reality the work of *Tosafot Rid*. Rabbi Yehoshu'a of Kutna, author of *Yeshu'ot Malko*, maintained that this commentary, although attributed to Rashba, was actually the work of Rabbenu Shlomoh, the son of Rabbenu Avraham Min Ha-Har, who in turn was the teacher of Rabbenu Yonah.<sup>52</sup>

Hazon Ish, in his collected correspondence, *Kovets Iggerot*, II, no. 23, emphasizes that the question of authenticity of authorship is highly significant. Hazon Ish writes:

It is not my practice to focus upon photostats of manuscripts for we do not know who authored them and one might well say the scribe wrote as was his wont. And it is well known that in halakhic matters one should not much rely<sup>53</sup> on new discoveries; rather one should rely only upon the works of decisors that have been transmitted from one generation to the next without interruption.

In his introduction to the first volume of the edition of the *Talmud Bavli* published by the Machon ha-Talmud ha-Yisra'eli ha-Shalem which includes a compilation of variant textual editions of the Talmud entitled *Dikdukkei Sofrim ha-Shalem*, Rabbi Shlomoh Yosef Zevin emphasizes that a variant talmudic text is significant only when it can be demonstrated that an early-day authority based his ruling upon that version of the text. Rabbi Zevin cautions against attributing significance to divergent textual readings in instances where there is no evidence of their acceptance by early-day authorities. Rabbi Zevin further cites the statement of Rambam in his responsa (ed. Blau, no. 442) to the effect that one cannot accept manuscripts as authoritative unless they are supported by the testimony of scholars. For Rabbi Zevin two factors are necessary in order to render variant textual readings meaningful: the manuscript text itself and parallel statements in already accepted works of other authorities ("*sefarim ve-sofrim*").<sup>54</sup> The latter he cogently declares to be the testimony of scholars to which Rambam refers.

Problems associated with authenticating new manuscripts are emphasized by Rabbi Ben-Zion Uziel, *Mishpetei Uzi'el, Hoshen Mishpat, Mahadura Tinyana*, no. 6, sec. 2. In an uncharacteristically caustic statement, Rabbi Uzi'el remarks, "I wish to note that it is not the antiquity [of works] that gives them halakhic value but rather the personality of their authors, and a manuscript whose author and provenance we do not know is as if it did not exist. Regarding matters such as this it is said '*Lav Mar bera de-Ravina hatim aleh*—This does not bear the signature of Mar the son of Ravina.'" Rabbi Uziel asserts that, in order to give credence to a new manuscript, the authenticity of its authorship must be demonstrated beyond cavil.

Nevertheless, many scholars were prepared to judge the authenticity of a manuscript simply on the basis of its style and content. Rabbi Chaim Ozer Grodzinski, in a communication dated Sivan 1939, *Kovets Iggerot*, II, no. 461, explicitly states that the authenticity of authorship of the newly published *Hibbur ha-Teshuvah* of Me'iri is self-evident on the basis of both style and content.<sup>55</sup> Similarly, in at least one instance, Hazon Ish did himself accept a manuscript as authentic when its style and content rang true. In a discussion regarding a specific geonic comment in the *Teshuvot ha-Ge'onim*, *Hazon Ish, Orah Hayyim* 39:6, states: "It appears obvious that this responsum was authored by a Ga'on."

Rabbi Yechiel Michal Tucatzinsky, *Sefer Erets Yisra'el*, (Jerusalem, 1956), p. 40, states that he originally hesitated to accept a certain statement

attributed to *Teshuvot ha-Ge'onim* because he thought that the statement in question contradicted the Talmud and he was doubtful with regard to whether or not one might rely on the authenticity of new discoveries. Yet he concludes his remarks by stating, "However, after I studied all the lengthy material found in *Sefer Otsar ha-Ge'onim* with concerted attention, I came to understand that these lofty words could indeed be uttered, but only by early scholars of antiquity such as these. . . ." Again, in this instance, it is apparent that it was style and content that established the authenticity of authorship in the eyes of Rabbi Tucatzinsky.

#### IV. HAZON ISH ON TEXTUAL EMENDATION

The question of emendation of rabbinic texts of the talmudic period in light of new discoveries is a significant one. In his discussion of this subject, Professor Leiman cites at length a communication of Hazon Ish, *Kovets Iggerot*, I, no. 32:<sup>56</sup>

You sought to explain a *sugya* and to emend a talmudic passage in accordance with the reading of the Munich manuscript. Do you suppose, then, that the true sense of the passage eluded all the leading scholars from the period of the *rishonim* until today? And all because of one scribal error that lead to a conflated text which mislead all scholars? I will have none of it. The *rishonim* would prepare to lay down their lives on behalf of their manuscripts. God's providence hovered over them so that Torah would not be forgotten in Israel. When they set about to publish the Talmud, the leading sages of that generation were prepared to lay down their lives in order to produce a correct text. If on occasion we benefit from the manuscripts in that they clear up errors that accrued throughout the generations, this provides no license to emend a text that was approved by all our sages without the slightest doubt being raised. Heaven forbid that we destroy!

On the basis of this letter, Professor Leiman concludes that *Hazon Ish* would not have looked kindly upon a textual emendation that contradicts previously accepted authorities, but that when the emendation is "necessary and persuasive" and it is supported by parallel texts, *Hazon Ish* would welcome such emendation.

However, that quotation is incomplete. That very letter concludes with a cautionary note. *Hazon Ish* writes:

Think to yourself: When we have three manuscripts before us and two are identical we accept the two and ignore the single [manuscript]: Who can tell us that the Munich manuscript is not the one that was nullified by the majority [of manuscripts] in its time? And who is to tell us that it was not known to be inaccurate?

In the newly published volume of letters of the Hazon Ish, *Kovets Iggerot*, III, no. 2,<sup>57</sup> Hazon Ish's negative view regarding new manuscripts as the basis for textual emendation of talmudic texts is stated even more sharply and explicitly. Hazon Ish writes:

And the matter of emendation of the Talmud even though it appears to be far-fetched in cases in which we do not find textual variations, nevertheless, we find many similar instances [in which emendation is necessary]. For, as a result of the many tribulations and expulsions, there might be found only a single text in a city or province, and this one smudged as is usual. The Oral Law was preserved by divine providence and many times it was emended by sages and disagreement arose with regard to their emendation. This also was through divine providence as punishment for forgetting the Torah. And by virtue of "sweetening of the punishment" these and those are regarded as "the words of the living God." Handbreaths of the Torah were revealed through divergent texts. Many times laws were decided in accordance with that which emerged from two different texts because they were not compiled by coincidence. And we are sure that a mistake that is not at all part of Torah did not occur because God entered into a covenant with us with regard to the Oral Law. . . .

Much was revealed through Rambam who accepted an emendation different from that which had been accepted by the scholars who preceded him. But differing texts have not been revealed to us except in situations in which a dispute has arisen. However, where all were in agreement, they transmitted the text that they had agreed upon without comment. Thus it is not unlikely that Rambam accepted a different text. However, other textual versions are not possible because *the entire Torah has been revealed*. (emphasis mine)

Hazon Ish expresses a conviction that all that transpired with regard to preservation of talmudic texts occurred in accordance with a divine plan and divine providence. Providence decreed that some texts be preserved for posterity and that some be relegated to obscurity. Accordingly, newly discovered texts that were not relied upon by early-day authorities are of little value to us.

Nevertheless, despite the fact that Hazon Ish did not find new manuscripts overly useful for purposes of textual emendation, he was not necessarily opposed to textual emendation provided that such emendation is compatible with normative positions recorded in *Shulhan Arukh* and early decisors. As Hazon Ish himself declares in *Kovets Iggerot*, I, no. 32: "And all because of one scribal error that lead to a conflated text which mislead all scholars?" In that query Hazon Ish appears to be arguing that, from a halakhic perspective, a text that was accepted throughout the ages and that had not been emended was obviously understood by earlier authorities in a certain manner and therefore must be accepted at face value. Thus, material found in newly published manuscripts would not change that perspective.<sup>58</sup>

The extent to which Binyamin Richler, a scholar and librarian, echoes the sentiments expressed by Hazon Ish is striking. He notes that in transcription of manuscripts:

Often the editors did not make use of all manuscripts available or did not know how to select the most accurate ones. Too often, publishers of texts are guided by considerations of deadlines and cost. *Thus, in his quest for accuracy, the serious scholar must approach his work with a liberal dose of skepticism.*<sup>59</sup>

## V. CONCLUSION

The status of many manuscripts now being published is somewhat different from that of those published in the past. Of recently published manuscripts, especially those published under the aegis of *Mossad ha-Rav Kook*, *Yad ha-Rav Herzog*, and *Machon Yerushalayim*, which are of high quality and evidence meticulous scholarship, one may say “*akhsher dara*.” Scrupulous care has been taken to demonstrate authenticity of authorship and to correct mistakes that have crept into the texts. Extensive footnotes chronicle passages that are not entirely comprehensible and explain lacunae of words or phrases. The reader is cautioned not to draw definitive conclusions based upon the reconstructed text. Thus, from a scholarly viewpoint, many pitfalls that have been associated with manuscripts in the past have been avoided and these newly published texts certainly enhance talmudic literature.

Nevertheless, for halakhic purposes, it is the consensus of contemporary authorities that inordinate weight not be given to newly published material. Even earlier authorities who gave a relatively high degree of credence to newly discovered manuscripts did so within a limited context. Accordingly, formulation of novel halakhic positions and adjudication of halakhic disputes on the basis of such sources can be undertaken only with extreme caution.<sup>60</sup>

## ENDNOTE

Rabbi Feinstein's analysis of Rambam is also contradicted by a responsum of Rambam published in *She'elot u-Teshuvot ha-Rambam*, ed. Joshua Blau (Jerusalem, 1958), I no. 148, and also *She'elot u-Teshuvot ha-Rambam, Pe'er ha-Dor*, no. 60. In all likelihood, Rabbi Feinstein would have maintained that this source is also unreliable. [However, as noted below, note 55, many authorities have accepted *Teshuvot ha-Rambam, Pe'er ha-Dor*, as authoritative. Similarly, Rabbi Ovadia Yosef, *She'elot u-Teshuvot, Yabi'a Omer*, II, *Yoreh De'ah*, no. 19, sec. 1, explicitly accepts this particular responsum as being authentic.] It should also be noted that *Tsofnat Pa'aneah al ha-Rambam, Hilkhhot Milah* 3:7, understands Rambam's position in a manner that appears to be at variance with the interpretation of Rabbi Feinstein. Similarly, Rabbi



Yosef, *loc. cit.*, adduces this responsum of Rambam in elucidating Rambam, *Hilkhot Milah* 3:7, in a manner that contradicts the thesis of Rabbi Feinstein. See also Rabbi Neriah Moshe Gottel, *Or ha-Mizrah*, Tishri 1981, p. 66, who elucidates the commentary of *Yad Ramah*, *Sanhedrin* 58b, in a manner from which it follows that *Yad Ramah* maintains that it is Rambam's opinion that non-Jews receive heavenly compensation for performing *mitsvot*. See also Rabbi Israel Gustman, *Kuntresei Shi'urim, Kiddushin* (New York, 1970), pp. 245-46, who infers from *Derashot ha-Ran*, no. 5, that *Ran* maintains that non-Jews are rewarded for performance of *mitsvot*.

Moreover, it is readily apparent that *Tosafot*, *Baba Metsi'a* 71a, maintain that non-Jews are rewarded for the performance of *mitsvot*. *Tosafot* explicitly declare that even though non-Jews are not bound by the prohibition concerning usury, they are, nevertheless, rewarded for abstaining from the taking of interest, just as our ancestors were compensated for fulfillment of the commandments even prior to their revelation at Sinai.

Rabbi Feinstein's principal argument is based upon *Baba Kamma* 87a. In the course of a lengthy discussion of the question of reward for performance of *mitsvot*, the Talmud entertains the possibility that one who is not commanded may receive a greater reward than one who is commanded. If a non-Jew were to receive reward for *mitsvot* he performs, it follows that, according to this view, his reward would be greater than that of a Jew who is commanded. Rabbi Feinstein finds such a possibility to be entirely implausible and declares that, were non-Jews to receive heavenly reward for performance of *mitsvot*, the Talmud could not possibly have entertained the possibility that one who is not commanded receives greater reward than one who is commanded.

Since so many primary sources are at variance with Rabbi Feinstein's opinion, the view that each of these is the work of a *talmid to'eh* seems tenuous at best. A resolution of Rabbi Feinstein's problem may be formulated on the basis of the comments of Maharsha, *Hiddushei Aggadot*, *Avodah Zarah* 24a. Maharsha declares that a non-Jew who is not commanded to perform *mitsvot* is rewarded by the Almighty in this world in order to prevent him from receiving eternal reward in the world-to-come. A parallel situation exists with regard to a Jewish woman who is not obligated to fulfill certain positive commandments, i.e., positive commandments that are time-bound, but who nevertheless does receive reward if she chooses to perform them. Yet Maharsha does not state that women are granted a reward in this world to prevent them from receiving reward in the world-to-come. Indeed, such a position would be peremptorily dismissed as absurd.

Evidently, a distinction must be drawn between the non-Jew who is not commanded and a Jewish woman who is not commanded. Analysis of the language of Rambam, *Hilkhot Melakhim* 10:9-10, crystallizes this distinction. It is evident from Rambam's comment that a non-Jew may not fashion his own *mitsvot* since that is considered a form of creating a new religion (*hiddush dat*). However, declares Rambam, when, "in order to receive reward," a non-Jew performs one of the commandments of the Torah "in the proper manner" (excluding observance of Sabbath and study of Torah), "one does not prevent him from doing so." One must question why Rambam includes the phrase "in order to receive reward" in his formulation of the conditions under which it is permissible for a non-Jew to perform *mitsvot*. It would appear that Rambam maintains that, if a non-Jew performs the *mitsvah* for its own

sake, that motivation, in and of itself, constitutes a form of *hiddush dat* and, accordingly, Rambam emphasizes that a non-Jew may perform the *mitsvah* only if he does so in order to receive reward. Altruistic performance of a *mitsvah* on the part of a non-Jew would be deemed a "*hiddush dat*," i.e., an innovative and hence forbidden practice. Thus an act performed by a non-Jew in service of God is proscribed if (1) it is inherently novel and in no way commanded or (2) it is performed by a person whose service is undesired by the Deity. In the latter case the novelty of the act lies in the attempt to fulfill the divine will when no such expressed will exists. The same act performed for self-serving reasons is not miscast as fulfillment of the divine will and hence is even to be rewarded. According to this analysis, a non-Jew is essentially viewed as "removed" or excluded (*mufka*) from performance of *mitsvot* and may fulfill them only for the purpose of receiving reward (*al menat le-kabel peras*), i.e., for ulterior purposes. It would be plausible to assume that such an *eino metsueh ve-oseh* does not receive greater reward than a *metsueh ve-oseh* even according to the possibility entertained in *Baba Kamma* 87a and that the discussion in *Baba Kamma* 87a is limited to an *eino metsueh ve-oseh* who is not "removed" from performance of *mitsvot*.

However, in contradistinction to non-Jews, women are not *mufka* from performance of *mitsvot*, but are merely exempt from certain *mitsvot*. A woman may determine not to take advantage of that exemption and proceed to perform the *mitsvah* in order to fulfill a divine commandment. This *mitsvah* may be performed by her purely in order to fulfill the divine will and not at all for the purpose of receiving reward (*she-lo al menat le-kabel peras*). It is entirely plausible that the reward bestowed upon such an individual might be greater than that of one who is commanded.

Understood in this manner, Maharsha's comment that a non-Jew who is not commanded receives reward in this world reflects the assignment of compensation in a manner that is entirely appropriate (*middah ke-neged middah*), i.e., since the non-Jew has fulfilled the commandments entirely for ulterior motives his reward is in the form of compensation in this world. However, women, whose fulfillment of *mitsvot* may properly be motivated by an entirely noble desire to fulfill the divine will, may be deserving of a commensurate eternal reward in the world-to-come.

Evidence in support of this view may be found in the comments of Ran, *Rosh ha-Shanah* 33a. Ran declares that women may recite the formula "*ve-tsivanu be-mitsvotav*—who has commanded us with regard to His commandments" in pronouncing a blessing before performance of positive time-bound *mitsvot* from which they are exempt "since men are commanded and, moreover, they [the women] receive reward." In contrast, it would seem obvious that the phrase "who has commanded us" can not be recited by non-Jews even if one maintains that non-Jews do receive reward for *mitsvot*. As noted earlier, the basis for this distinction is that a non-Jew is "removed" (*mufka*) from fulfillment of *mitsvot* whereas a woman is merely exempt. It is thus implicit in Ran's remarks that he recognizes that the performance of *mitsvot* on the part of women is cherished by God. [Cf. the comments of R. Elchanan Wasserman, *Kovets Shi'urim, Kiddushin*, nos. 142-144 as well as of R. David Auerbach, *Halikhot Beitah, Petah ha-Bayit*, no. 19. An intriguing parallel may be found in the comments of Maharsha, *Hiddushei Aggadot, Sotah* 14a, and R.

Eliezer Segal-Landau, *Yad ha-Melekh al ha-Rambam, Hilkhoh Teshuvah* 10:4. According to these sources the Almighty was not desirous of fulfillment of *mitsvot hateluyot ba-arets* (commandments that are contingent upon the land) by Moshe Rabbenu. Therefore, Moshe Rabbenu was forced to beseech the Almighty to be permitted to enter the Promised Land, not so that he be enabled to fulfil the commandments for their own sake, but in order to obtain compensation for their performance. Cf., however, the comments of Rabbi Chaim of Volozhin, *Ruah Hayyim*, Avot 1:3, s.v. *ve-na'amik* as well as R. Ben-Zion Firrer, *Panim Hadashot ba-Torah* (Jerusalem, 1975), IV, 190.]

Thus, in raising the possibility that "one who is not commanded but performs a *mitsvah*" may receive a greater reward than one who is commanded and performs the *mitsvah*, the comments of the Talmud may be limited to Jews who are exempt from *mitsvot* but not to non-Jews whose performance of *mitsvot* must be *al menat le-kabel peras*.

[Further evidence that a distinction must be drawn between observance of *mitsvot* on the part of non-Jews and on the part of women may be deduced from the comments of *Tosafot*, *Baba Metsi'a* 71a. *Tosafot* maintains that non-Jews are rewarded for fulfilling *mitsvot* even though they are not commanded in the same manner that our forefathers fulfilled the precepts of the Torah even though the Torah had not yet been revealed at Sinai. *Tosafot* compares the fulfillment of *mitsvot* by non-Jews to fulfillment of *mitsvot* on the part of our forefathers rather than to fulfillment of *mitsvot* by women who also receive reward for performance of *mitsvot* although they are not commanded. In light of the above formulated distinction it may be argued that observance of *mitsvot* on the part of women is not comparable to observance on the part of non-Jews since women are merely exempt from performance of *mitsvot* but are not "removed" (*mufka*) from their performance. Our forefathers were not only exempt from performance of *mitsvot* but were "removed" from their performance (*mufka*) since there did not yet exist a divine command to fulfill the precepts of the Torah. *Tosafot* deduces that if our forefathers did indeed receive reward for performance of commandments despite the fact that they were "removed" (*mufka*) from performance of commandments so, too, non-Jews must also receive reward despite the fact that they are "removed" (*mufka*) from performance of commandments.]

## NOTES

1. See *Iggeret Rav Sherira Ga'on*, ed. Aaron Hyman (London, 1910), p. 45.
2. R. Shlomoh Yosef Zevin, introduction to *Masekhet Ketubot* of the *Talmud Bavli* published by the Machon ha-Talmud ha-Yisra'eli ha-Shalem (Jerusalem, 1972), p. 9.
3. Cf., however, *Maggid Mishneh*, *ad locum*, who quotes Rabad as stating that he found each of the manuscript readings to be equally cogent.
4. It has been suggested that early authorities were prepared to assign greater weight to newly discovered manuscripts because, prior to the advent of the printing press, scholars recognized that due to the comparative inaccessibility and expense of scholarly works, they and their teachers could not possibly have consulted all authoritative writings, but that, subsequent to introduction of the printing press, attitudes changed on the assumption that what was published was qualitatively superior and more authoritative than mater-

- ial allowed to remain unpublished. The sources cited in this discussion do not recognize that distinction but do point to incorporation in *Shulhan Arukh* or providential guidance reflected in broad acceptance by halakhic decisors as distinguishing criteria.
5. The comments of Hazon Ish are cited in *Encyclopedia Talmudit*, vol. 9, p. 345, note 29, as asserting that new manuscripts may not be relied upon in resolving any halakhic dispute or controversy. That understanding of Hazon Ish's position is based upon an incomplete citation of his comments. A careful reading of Hazon Ish shows that Hazon Ish decries only reversal of a decision recorded in *Shulhan Arukh* on the basis of contradictory manuscript sources because of the misguided presumption that *Shulhan Arukh* was unaware of such sources. See also R. Shlomoh Zalman Havlin, "Kivunim be-Hotsa'at Sifrei ha-Rishonim," *Ha-Ma'ayan*, vol. 8, no. 2 (1968), pp. 36-37.
  6. Moreover, see Rosh, *Sanhedrin* 4:6; Rema, *Hoshen Mishpat* 25:2; and Shakh, *Yoreh De'ah* 242, *Kitsur Hanhagot Issur ve-Hetter*, no. 8. Rosh maintains that in a situation in which a decisor would retract his own ruling were he to become aware of an earlier source contradicting his conclusion, the decision is not binding. The identical consideration serves to raise doubt concerning currently accepted rulings contradicted by newly discovered sources.
  7. See also R. Chaim Hizkiyahu Medini, *Sedei Hemed*, *Kellalei ha-Poskim*, no. 13, sec. 31 and *Pithei Teshuvah*, *Hoshen Mishpat* 25, appended note. This report is cited without attribution by H.J. Zimmels, *Ashkenazim and Sephardim: Their Relations, Differences and Problems as Reflected in the Rabbinical Responsa* (London, 1958), p. 53.
  8. In fact, some writers have asserted that the sobriquet "Maran" or "Esteemed Teacher," by which the *Bet Yosef* is known among Sephardim is a mnemonic for "mi-matayim rabbanim nismakh"—he received approval from two hundred rabbis. See *Ta'alumot Lev* (Jerusalem, 5746), III, 106b. For further discussion of the acceptance accorded both *Shulhan Arukh* and Rema see R. Ovadia Yosef, *Yabi'a Omer*, V, *Divrei Petihah*; and *idem*, *Teshuvot Yehaveh Da'at*, V, appendix, *Kellalei Maran ha-Shulhan Arukh*, secs. 4-6, as well as R. Shlomoh Zalman Braun, *She'arim Metsuyanim be-Halakhah al ha-Shas*, I, 397-398.
  9. However, according to the line of argumentation presented above, note 6, decisions of latter-day authorities which contravene those of earlier authorities are not necessarily binding. Thus decisions of Rosh, Rif, and Rambam, in instances where those authorities were unaware of the positions of earlier authorities, might not be binding since they were based on incomplete information. In such cases the decisions would not be binding even if accepted by a majority of R. Joseph Caro's contemporaries for the majority, also based their view upon an erroneous premise. If, on the other hand, as *Tumim* argues, the decisions of *Shulhan Arukh* and Rema are binding because they were divinely inspired, the existence of opposing views is entirely irrelevant.
  10. A position that may be perceived as contradictory to *Tumim's* thesis is reflected in remarks of R. Chaim Joseph David Azulai, *Yosef Omets*, no. 82.
  11. For references to "the holy spirit" in halakhic decision-making see Ramban, *Baba Batra* 12a; R. Chaim of Volozhin, *Nefesh ha-Hayyim*; Part 4, secs. 18 and 20; and Kovets *Iggerot Hazon Ish*, vol. I, nos. 15 and 33. For a discussion of the propriety of reliance upon overt divine intervention in halakhic decision-making see Rabbi J. David Bleich, "Lo ba-Shamayim Hi: A Philosophical Pilpul," *Studies in Jewish Philosophy: Collected Essays of the Academy for Jewish Philosophy, 1980-1985*, ed. Norbert M. Samuelson (Lanham, New York, London, 1987), pp. 463-488.
  12. *Tumim* does not refer to Rema's comment recorded in *Hoshen Mishpat* 25:2 in which Rema declares, "...but if, at times, there is found a responsum of a ga'on that is not mentioned in any work and others disagree with him, it is not necessary to rule in accordance with the later authorities for it is possible that they did not know of the words of the ga'on and that, had they known, they would have reversed themselves." *Tumim* presumably was not troubled by Rema's comment and regarded it as irrelevant with regard to any ruling recorded by *Shulhan Arukh* and Rema since he maintained that those rulings were divine-

- ly guided. For similar reasons, a claim of "kim li" cannot be advanced on the basis of positions unknown to *Shulhan Arukh* and Rema.
13. See *Tumim, Kitsur Tokpo Kohen* 123-124 and *Urim, Hoshen Mishpat* 25:22.
  14. *Tumim's* statement is cited with approbation by *Hatam Sofer, Even ha-Ezer*, vol. II, no. 102. See also *She'elot u-Teshuvot Divrei Hayyim*, vol. II, *Yoreh De'ah*, no. 105 and *Teshuvot Or Gadol*, no. 27. Cf., however, *Yad Avraham, Yoreh De'ah* 110, *Shakh, Dinei Sfek Sfeka*, no. 20, who disagrees with *Tumim*. See also *Kesef Kedoshim, Hoshen Mishpat* 25.
  15. Cf. *Hazon Ish, Kovets Iggerot*, III, no. 2.
  16. Cf. *Mishnah Berurah, Bi'ur Halakhah* 345:7, s.v. *she-ein sham shishim ribbo*.
  17. See *Teshuvot Bet Efrayim* (Warsaw, 1884), no. 26, p. 90.
  18. Although predicated upon somewhat different considerations and expressed in a different idiom this principle is comparable to the legal doctrine of *stare decisis*, i.e., the principle that, once a principle of law is laid down, that principle will constitute binding precedent to be adhered to and applied to all future cases. Under that doctrine, grounded on a policy designed to promote security and certainty, such precedents are generally followed even though they may later be found to be lacking in legal cogency.
  19. Cf. *Kesef Kedoshim, Hoshen Mishpat* 25.
  20. Cited in Rabbi Joseph B. Soloveitchik, *Shi'urim le-Zekher Abba Mari Zal*, I (Jerusalem, 1983), 228.
  21. Although upon a cursory reading of the biblical text it would seem that the verse refers to historical events, nonetheless, it is clear that the Talmud, *Shabbat* 23a, understood the verse as embodying a halakhic principle.
  22. Indeed, an extreme antithetical view is registered by R. Shlomoh Luria, *Yam shel Shlomoh, Hullin, Hakdamah Sheniyah*. Maharshah objected strongly to the acceptance of *Shulhan Arukh* as establishing normative Halakhah. One of his objections was that some of *Shulhan Arukh's* decisions were based upon corrupt and inaccurate versions of various texts. Thus Maharshah challenges the authority of *Shulhan Arukh* precisely because of conflicting manuscripts.
  23. See also *Shulhan Arukh ha-Rav* 448:8.
  24. R. Schneur Zalman mi-Liady, *Siddur Torah Or: Im Perush Sha'ar ha-Kollel* (Brooklyn, NY, 1987), *Seder Mekhirat Hamets*, p. 574.
  25. For a further discussion of this issue see the responsum of *She'erit Yehudah* in its entirety as well as R. Moshe Sternbuch, *Mo'adim u-Zemanim*, IV, no. 274.
  26. Emphasis mine.
  27. See above, p. 26.
  28. See *Teshuvot Havot Ya'ir*, no. 165 and *Urim ve-Tumim, Urim* 25:22 for a discussion of the role of Sema and Shakh in particular.
  29. A fuller discussion of whether or not manuscript evidence can be relied upon in reversing rulings of authorities who flourished subsequent to publication of *Shulhan Arukh* is beyond the scope of the present discussion. It would, however, appear to be the case that many decisors were prepared to do so. See, for example, *Teshuvot Hatam Sofer, Even ha-Ezer*, I, no. 53, and *Teshuvot ha-Rim, Even ha-Ezer*, no. 26, who, on the basis of manuscript evidence, were willing to rule in opposition even to decisions that the author of *Shulhan Arukh* recorded in his *Teshuvot Bet Yosef*. Other authorities who rely upon manuscript evidence in ruling contrary to positions espoused by earlier decisors include *Hokhmat Adam, Binat Adam* 132:4, s.v. *od yesh takkanah*, and R. Iser Zalman Meltzer, in a note appended to the preface to the edition of *Hiddushei ha-Ramban* which he edited (Jerusalem, 1928).
  30. Cf., however, *Ben Ish Hai, Teshuvot Rav Pe'alim, Yoreh De'ah*, II, no. 18, who disagrees with R. Jacob Ettlinger's analysis and maintains that Rosh had access to this responsum of the *Ge'onim*. See also comments of R. Ovadia Yosef, *Yabi'a Omer, Yoreh De'ah*, I, 14:6.
  31. Cf., however, *Yabi'a Omer, Yoreh De'ah*, I, 14:5.
  32. Cf., however, the position of *She'arim Metsuyananim be-Halakhah al ha-Shas*, I, 398.
  33. R. Shlomoh Zalman Havlin, writing in *Ha-Ma'ayan*, vol. 8, no. 2, p. 36, draws attention to another scholar, R. Shimon Shkop, who is renowned as an analytic theoretician, rather

than as a decisor, who was prepared to rely upon newly published manuscripts in confirming a view contradictory to Rema's normative ruling. The Mishnah, *Baba Batra* 134a, declares that a person lacks credibility to establish, on the basis of his own uncorroborated testimony, a fraternal relationship between himself and another person for the purpose of substantiating the latter's claim to share in an estate in which they are common heirs. Lack of credibility is based upon the fact that such testimony effectively diminishes the inheritance of other brothers whose identities and right of inheritance have been established. Nevertheless, the person declaring the relationship must surrender a share of his own inheritance to the individual he acknowledges as a brother and hence as a co-heir. Understandably, the Mishnah further stipulates that should the newly recognized brother and co-heir die without issue, the property vested in him as a result of acknowledgment of the fraternal relationship must be returned to the brother whose inheritance was commensurately diminished. Yet, the balance of the decedent's estate is apportioned among all surviving brothers equally, provided that they do not explicitly deny the relationship. Acknowledgement of the fraternal relationship by one brother is, in effect, acknowledgment that all brothers are co-heirs to his estate.

Ramah, cited by *Tur Shulhan Arukh*, *Hoshen Mishpat* 280, addresses a situation in which the newly-acknowledged brother used his inheritance to acquire other property and asserts that reason dictates that the same rule apply. Nevertheless, Ramah concedes that if the inherited assets were dissipated the brother whose original inheritance was diminished by virtue of his acknowledgment of the fraternal relationship has no superior claim upon the estate and, accordingly, all brothers share equally in the inheritance. This is how Ramah's position was understood by *Darkei Mosheh ad locum*; Rema, *Hoshen Mishpat* 280:2; *Bi'ur ha-Gra* 280:2; and *Netivot ha-Mishpat* 280:1.

However, R. Shimon Shkop, *Sha'arei Yosher*, II, *sha'ar ha-hamishi*, sec. 11, writes that *Yad Ramah*, *Baba Batra*, *Yesh Nohalin*, *Ot Tet*, grants recovery even if the deceased brother's estate is composed of only property acquired subsequent to vesting of his inheritance. Ramah, however, adds that, if the other brothers' share in the original inheritance became destroyed, a different rule pertains: If the original inheritance or property acquired in exchange for the original inheritance is extant, the brother whose share was diminished is entitled to recovery; however, if that property has been destroyed, the brothers all share equally. According to the published text of *Yad Ramah*, a distinction based upon whether or not the original inheritance is extant in the estate of the deceased brother arises only in cases in which the inheritance of the surviving brothers has been destroyed. If their inheritance has not been destroyed, the brother whose share was diminished enjoys an unqualified right to recover the amount by which his original inheritance was diminished.

Quite obviously, the published text of *Yad Ramah* is at variance with Ramah's ruling based on *Tur Shulhan Arukh's* citation of Ramah. *Sha'arei Yosher* remarks upon this discrepancy and concludes by stating, "Even though I fear to contradict the words of Rema, of blessed memory, upon whom the house of Israel relies, nevertheless, in a matter apparent to the eyes such as this, it is a *mitsvah* to declare that Rema's ruling is not correct."

It should be noted that *Sha'arei Yosher's* willingness to rely upon newly available manuscripts in overturning a halakhic decision of Rema is manifest only in a limited situation in which Rema's ruling was predicated upon a single authority whose writings were generally unavailable. It cannot be concluded therefrom that he would have been similarly inclined to rely upon manuscript evidence under other circumstances.

34. Pp. 106-107. See also R. David Cohen's introduction to his *He'akov le-Mishor* (Brooklyn, 1983), in which he advances a number of other theories that may account for copyists' errors including the suggestion that the copyist may have had someone read the text to him with the result that errors crept into his copy as the result of mispronunciation by the reader or as the result of the copyist's own mishearing. See also R. Baruch ha-Levi Epstein, *Mekor Barukh*, III, chap. 26.

The fact that copyists were not necessarily meticulous and thus some works contain

scribal errors is reflected in comments of Rabad in his discussion of *Pesahim* 76b as found in his commentary on the Rif. In defending Rif's position against the refutations of *Ba'al ha-Ma'or* (19a in the pages of Rif), Rabad remarks that Rif's own emendations to a previously printed text were ignored by copyists because of their laziness (*atslut ha-sofrim*).

35. For a fuller discussion of Rabbi Feinstein's thesis, see Endnote appended hereto.
36. Cf., however, *Mishnah Berurah*, *Sha'ar ha-Tsiyun* 451:169-170, who surprisingly seems to maintain that, even when the text of a primary source is in dispute, an original version clearly indicating the correct reading is not to be regarded as decisive. The issue is whether pottery that cannot be *kashered* for Passover use maybe utilized for cold food on Passover. *Sha'ar ha-Tsiyun* cites a list of conflicting authorities who disagree with regard to whether the text of *Shulhan Arukh* reads that those utensils may not be used even (*afilu*) for cold food or whether the text reads that such utensils may be used *only* (*ela*) for cold food. To the list of sources supporting the permissive reading, *Sha'ar ha-Tsiyun* 451:169, appends the remark "and so I saw in the edition of *Shulhan Arukh* that the author, of blessed memory, published during his lifetime which I was privileged by the Lord to obtain." However, in *Sha'ar ha-Tsiyun* 451:170, *Mishnah Berurah* cites a list of authorities who support the restrictive version of the text of *Shulhan Arukh* without recording a definitive decision in support of the permissive reading. *Mishnah Berurah* thus seems to maintain that the issue remains unresolved despite the fact that he had access to the *editio princeps* of *Shulhan Arukh*. Perhaps *Mishnah Berurah* was not convinced that the earliest publication of *Shulhan Arukh* was necessarily free from copyists' errors. Yet this appears to be somewhat unlikely since, in citing the *editio princeps*, he incorporates the comment, "which I was privileged by the Lord to obtain." If *Mishnah Berurah* was not convinced that the first edition was more reliable than subsequent editions, access to the *editio princeps* could hardly be construed as a mark of privilege.
37. The same argument is presented by *Minhat Ya'akov* in his *Torat ha-Shelamim*, *Yoreh De'ah* 184:12.
38. See *Ba'alei ha-Nefesh*, ed. Kapah, p. 32 and *ibid.*, note 14.
39. See, however, *Bet Efrayim*, *Orah Hayyim*, no. 26, p. 86, who comments upon a statement of Mordekhai in which the latter quotes a version of *Halakhot Gedolot* that is at variance with the extant edition of the text of *Halakhot Gedolot*. *Bet Efrayim* states that the testimony of *rishonim* must be relied upon and, therefore, the version of *Halakhot Gedolot* as recorded in Mordekhai must be preferred over that of the printed editions. However, it is possible that the comments of *Bet Efrayim* are limited to the text of *Halakhot Gedolot* since *Bet Efrayim* himself quotes *Teshuvot Menahem Azariah*, no. 32, as stating that the extant version of *Halakhot Gedolot* is replete with errors and therefore unreliable.

It appears to this writer that it can be demonstrated that different versions and texts of *Halakhot Gedolot* were available throughout the generations. This is evident from two statements attributed to *Halakhot Gedolot* with regard to the High Holy Day observances. *Tur*, *Orah Hayyim* 582, cites the position of *Halakhot Gedolot* who decried the recitation of prayers customarily interpolated in the *amidah* prayer during the ten days of repentance. *Halakhot Gedolot* argues that since one may not make personal requests in the first three or the last three blessings of the *amidah*, these supplementary prayers should not be recited since they contain personal petitions. However, *Halakhot Gedolot* concedes that the petition "*Be-Sefer Hayyim*" may be recited at the end of the *shemoneh esreh*. *Halakhot Gedolot* advances the novel view that the prohibition against insertion of personal requests does not apply to petitions recited at the very end of the *shemoneh esreh*. *Bet Yosef*, *loc. cit.*, notes that although, in his commentary on *Berakhot* 34a, Rashba attributes these statements to *Halakhot Gedolot*, he, i.e., *Bet Yosef*, was unable to identify them in the text of *Halakhot Gedolot*. A contemporary scholar, R. Shlomoh Yosef Zevin, *Ha-Mo'adim be-Halakhah* (Jerusalem, 1959), seventh ed., p. 59, note 61, points out that the statements are, indeed, to be found in the published editions of *Halakhot Gedolot* and questions why *Bet Yosef* could not locate them. In light of the comments of *Teshuvot Menahem Azariah*, p. 32, cited above, it would appear to be the case that different ver-

sions of *Halakhot Gedolot* were published over the span of generations and Bet Yosef did not, in fact, have a text identical with the published version.

In the same vein, Rosh, *Rosh ha-Shanah* 4:6, cites a statement of *Halakhot Gedolot* declaring that the formula for the blessing on the shofar was ordained as "*lishmo'a kol shofar*" rather than "*litko'a ba-shofar*" in order to demonstrate that the *mitsvah* of shofar is fulfilled through the act of listening, not through the act of blowing. Rabbi Zevin, *Ha-Mo'adim be-Halakhah*, p. 41, note 4, observes that this statement of *Halakhot Gedolot* does not appear in our texts. Apparently, while the published version of *Halakhot Gedolot* contains statements absent in earlier manuscripts editions, conversely, some statements found in these manuscripts are absent in the published version. See also Avnei Nezer, *Orah Hayyim*, no. 497, sec. 5. It is interesting to note that Rosh, *Mo'ed Katan* 3:3, states that the author of *Halakhot Gedolot* was blind and his halakhic views were transcribed by various disciples. This may well have contributed to the discrepancies and omissions in the different manuscripts.

40. *Tradition*, Winter, 1981, pp. 304-305 and p. 309, notes 12-18.

41. Professor Leiman reports that Hazon Ish declared that one should not "overly" rely on manuscript evidence. See Kovets *Iggerot*, II, p. 37, cited by Leiman (1981), p. 305. However, asserts Leiman, Hazon Ish was not averse to occasional reliance upon such manuscript evidence. Professor Leiman overlooks the very significant distinction between manuscripts of Me'iri that predate the codification of the *Shulhan Arukh* and manuscripts of Maharshah that were published following codification of the *Shulhan Arukh*. In reality, unpublished responsa that postdate codification of *Shulhan Arukh* may well have been "overly" relied on by Hazon Ish and have been regarded by him as decisive when not contradicted by *Shulhan Arukh*.

Professor Leiman translates the phrase "*she-lo lismokh harbeh*" as "one ought not overly rely" and italicizes the qualifying adverb "overly." While his translation is not incorrect, it appears to this writer that the English rendition might well be "one must not much rely" (as Hazon Ish quite possibly was translating from his own native Yiddish "*men ken sikh nisht a sakh farlozen*"). The difference in nuance is slight but significant in terms of assessing Hazon Ish's attitude. In this instance, as in many of the passages cited in this paper, the reader is urged to peruse the original Hebrew sources since much of the flavor and nuance may be lost in translation and because subtlety of emphasis is all-important in assessing matters of attitude and instinct in determining the approach of these scholars to the manuscript data.

Professor Leiman (p. 306) further notes that Hazon Ish, *Orah Hayyim* 39:6 accepts a certain statement because it "appears obvious that this responsum was authored by a Ga'on." The topic under discussion is one of measurements (*shi'urim*), a topic that is somewhat obscure and not definitively clarified in the halakhic literature. Since no clear *mesorah* or tradition is involved in the issue and the statement in question appeared to be authentic, it is not surprising that Hazon Ish was inclined to accept the manuscript evidence in this particular instance.

42. *Sefer Torat ha-Bayit ha-Shalem*, edited by Rabbi Moshe Hershtler (Jerusalem, 1972), unnumbered pages, p. 3. Rabbi Hershtler's introduction is dated Nisan, 5723.

43. Cf., however, the remarks of R. Elchanan Wasserman, introduction to Kovets *he-Arot*, "*Yedi'ot Nikhbadot*," who demonstrates that the *rishonim* accepted as an acknowledged fact that the commentary of Rashi on *Nazir* was in reality that of Rashi. This is also the opinion of Sedei Hemed, *Kellalei ha-Poskim*, no. 8, sec. 5.

44. Cf. *She'elot u-Teshuvot Maharats Hayes*, *Imrei Binah*, no. 5. For a contrary view see Sedei Hemed, *Kellalei ha-Poskim*, no. 8, sec. 3, who cites numerous authorities who accepted this work as an authentic commentary of Rashi.

45. It may be noted that the publishers of the Vilna edition of the Talmud, in an editorial epilogue following the conclusion of tractate *Niddah* (p.5), point out that although R. Chaim Joseph David Azulai, *Teshuvot Hayyim Sha'al*, II, no. 27, identified a particular commentary



as that of *Tosafot Ri ha-Zaken*, nevertheless, the publishers themselves were convinced that this commentary was in reality not that of Ri ha-Zaken but was the work of a different Tosafist. Yet, although they had concluded that the attribution was incorrect, they nevertheless persisted in the use of the title "*Tosafot Ri ha-Zaken*" in their edition of the Talmud since this appellation was commonly accepted.

46. Cf. *Sedei Hemed, Kellalei ha-Poskim*, no. 10, sec. 17, who apparently questions the authenticity of but one of the responsa included in this collection.
47. An identical conclusion was reached at a much earlier time by R. Chaim Joseph David Azulai, *Shem ha-Gedolim, Ma'arekhet ha-Gedolim, Ot Yod*, no. 89. For a fuller discussion of the authorship of this work, see *Sedei Hemed, Kellalei ha-Poskim*, no. 10, sec. 6.
48. It is evident from the comments of the son-in-law of Avnei Milu'im, who annotated and prepared the index to *Avnei Milu'im*, that he was aware that the commentary on *Sukkah* attributed to Rashba was the work of Ritva. See note, included in index to *Avnei Milu'im*, appendix to Vol. I, entry *Sukkah* 31b, s.v. "Ritva."
49. For a further discussion see *Sedei Hemed, Kellalei ha-Poskim*, no. 10, sec. 1.
50. In recent years an entirely different version of Rashba's commentary on *Ketubot* has been discovered and published by Rabbis Moshe and Chaim Ben-Zion Hershler (Jerusalem, 5733). In his introduction to that work, Rabbi Chaim Ben-Zion Hershler notes that the commentary on *Ketubot* commonly attributed to Rashba is known to be the work of Ramban, but that this newly published manuscript is entirely different and did indeed emanate from the pen of Rashba as evidenced by the fact that numerous quotations from Rashba's commentary on *Ketubot* cited in the works of other scholars are found in this manuscript.
51. For an opposing view see *Shem ha-Gedolim, Ma'arekhet Gedolim, Ot Shin*, no. 19. For a further discussion see *Sedei Hemed, Kellalei ha-Poskim*, no. 10, sec. 5.
52. For other examples of questionable authorship reported by Rabbi Wasserman see his further comments, *ad locum*.
53. See above, note 41.
54. *Masekhet Ketubot of the Talmud Bavli* published by the Machon ha-Talmud ha-Yisra'eli ha-Shalem, p. 12. I am indebted to Rabbi Samuel N. Hoenig for bringing this important essay to my attention.
55. Rabbi Grodzinski, *She'elot u-Teshuvot Ahi'ezer*, III, no. 26, sec. 7, also seems to have accepted *Teshuvot ha-Rambam, Pe'er ha-Dor*, as being authentic. Rambam's *Teshuvot Pe'er ha-Dor* seems to have been accepted as authentic by *She'elot u-Teshuvot Teshuvah me-Ahavah*, II, no. 239; *Pithei Teshuvah, Yoreh De'ah* 2:9 and 98:2; and Maharsham, *Da'at Torah, Orah Hayyim*, 22:1.
56. As translated by Professor Leiman, *Tradition*, p. 306.
57. Obviously, at the time that he wrote his article, Professor Leiman could not have had access to this material published in 1990.
58. Although *Hazon Ish al ha-Rambam* (Bnei Brak, 1959), p. 532, emends a text in *Tosefta Parah* in a manner that contradicts the various accepted texts and versions (see Leiman, page 307), Hazon Ish prefaces his statement with the following comment: "Even though it would appear to be so from the *Tosefta* and it is quoted by Gra in *Eliyahu Rabba* as if it were correct, we cannot accept it. Upon reflection, this *Tosefta* must be considered to emanate from texts that have not been definitively corrected and this will be demonstrated on the basis of four proofs." Hazon Ish then attempts to prove his contention and concludes his statement in the following manner: "Based on what is written there, this is something "that would appear" ("*nireh*") [quotation marks in the text of Hazon Ish] to deviate from our teachers, of blessed memory, even though they cited the text of the *Tosefta*." Despite the arguments that he outlines, Hazon Ish was reluctant to deviate from the text that had been accepted by the Gra and he concludes with a tentative statement that "it would appear to be" that the correct reading is in accordance with his theory. It might be argued that, even were the emendation of Hazon Ish to be corroborated by data found in newly discovered texts, Hazon Ish himself would not necessarily have found that to be dispositive because the material would have been at variance with that which had

been accepted throughout the ages. However, Hazon Ish did accept textual emendation which resulted from scholarly proof on the basis of rigorous analytical study. Nonetheless, with regard to the usefulness of newly published texts, Professor Yehuda is probably correct in asserting that, in all likelihood, Hazon Ish would pay little attention to them insofar as textual emendation is concerned.

59. *Hebrew Manuscripts*, p. 107. Emphasis mine.
60. The reader's attention should be drawn to a number of additional sources cited in a recent article on this topic by Rabbi Zevi Ya'akov Lehrer, *Tsefunot*, vol. IV, no. 4 (July, 1992), pp. 68-73. Since this material was submitted for publication before the appearance of that issue of *Tsefunot*, a discussion of those sources is not incorporated herein.