

Rabbi J. D. Bleich's most recent book, *Contemporary Halakhic Problems* vol. VI, has just been published.

SURVEY OF RECENT HALAKHIC PERIODICAL LITERATURE

SPONTANEOUS GENERATION AND HALAKHIC INERRANCY

In his commentary on the scriptural verse “And these are the ordinances which you shall set before them” (Exodus 21:1), Rashi writes:

It should not enter your mind to say, I shall teach them a section of Torah or a halakhah twice or thrice... but shall I not trouble myself to cause them to understand the reasons for the matter and its explanation....”

Sadly, the letter to the editor prompted by my article on piscatorial parasites (*Tradition* 44:1, Spring, 2011,) betrays a lack of understanding of the problem I addressed. More regrettably, it proceeds to present an untenable solution to a quite significant problem that I did not address. The Anisakis problem is not born of a conflict between science and Halakhah regarding parasites permitted by *Hazal* because they arise from spontaneous generation. Assuredly, that is an issue that warrants its own full-court analysis. However, the position advanced as a solution to that problem, *viz.*, a) there is no spontaneous generation; b) *Hazal* were simply wrong on the facts; and c) the creatures described by *Hazal* are nevertheless permitted, seems to me—at least as formulated by the writer—to be entirely unacceptable. Moreover, the writer may feel entitled to propound any thesis he desires but application of that thesis to the Anisakis problem is a *non sequitur*.

I. SPONTANEOUS GENERATION

At root, the Anisakis controversy hinges upon a question of fact, *viz.*, are the parasites in question the product of spontaneous generation (as that concept was understood by *Hazal*) and hence permitted or are they the product of conventional sexual reproduction and consequently forbidden. Those who prohibit consumption of fish infested by Anisakis do not

at all question that there are, or were, creatures permitted by *Hazal* because *Hazal* accepted a theory of spontaneous generation. Nor do they challenge the veracity of the theory, although some may define the theory in a manner that others might consider novel.

The issue addressed in my article arises *not* because of the parasites *Hazal* permitted; it arises because of the ones they expressly prohibited. *Hazal* explicitly prohibited aquatic creatures found in the digestive tract of fish precisely because it is readily apparent that such creatures are not generated within the flesh of the host but are spawned outside its body. They permitted only creatures produced by “spontaneous generation” within the host. The Anisakis problem arises from the fact that it can be empirically determined that those parasites are spawned from eggs deposited in water. The eggs hatch and are imbibed by the host. The parasites mature, migrate from the intestinal tract and lodge in muscle tissue. Hence, they are creatures that “swarm in water” and are expressly forbidden by *Hazal*. And that is why, in delineating the framework in which the problem arises, I carefully stated that any proposed resolution of the presumed conflict between science and Halakhah is irrelevant to an inquiry into the status of fish infested by Anisakis. The notion that *Hazal* were misguided in accepting spontaneous generation as a reality may result in the conclusion, for example, that, since *Hazal* were in error with regard to the manner in which *kinim*, usually translated as lice, reproduce, it is not permissible to kill *kinim* on *Shabbat*. It might also lead to the conclusion that even parasites for which evidence of aquatic spawning is lacking are also forbidden. However, that notion patently fails to explain why Anisakis known to have been swallowed by a fish—creatures explicitly prohibited by *Hazal*—should be permitted. That is why—to use a piscatorial metaphor—the solution presented is a red herring.

Unfortunately, some exponents of the permissive view regarding the Anisakis parasites have buttressed their arguments with polemical attacks labeling their opponents as closet ideological leftists or outright heretics who reject the teachings of *Hazal* that are in conflict with modern science and hence forbid spontaneously generated Anisakis. Now, for the first time, one writer has chosen to use the medium of a letter to the editor to challenge the premises espoused by *Hazal* -- but with one added wrinkle: *Hazal* were misinformed but, not to worry, although predicated upon error, Halakhah need not be disturbed.

Despite the fact that the resolution of the problem of science *vs.* Halakhah is extraneous to my concern and mentioned only tangentially, I assume that, since it was I who introduced it on direct examination, the

issue becomes a fair target for cross-examination. Nevertheless, I remain adamant in insisting that any particular resolution of that issue is irrelevant and immaterial to an understanding of the Anisakis controversy.

As I have made abundantly clear, there are multiple ways of analyzing the ostensibly contra-scientific notion of spontaneous generation expressed by *Hazal*. None of those solutions involve ascribing scientific inerrancy to *Hazal*.

1. A Null Class

One logically plausible, but unlikely, explanation is that *Hazal* were correct with regard to theory but wrong in terms of application, i.e., *Hazal* propounded a perfectly valid halakhic theory whose ramifications may or may not be reflected in the physical universe. By way of comparison, a halakhic decisor may well examine the question of the proper formula of the blessing to be pronounced before eating the fruit of a tree grown on the moon or on one of the planets. The fact that no such tree exists does not make his inquiry any less intriguing. Anyone who might believe that such a tree exists would be in error with regard to the facts, but not with regard to the principle to be applied.

It is perfectly plausible to understand *Hazal*'s statement regarding spontaneous generation as part of the *mesorah*, or received tradition, concerning *Shabbat* restrictions, the prohibition regarding "creeping things" etc., but that their application of the principle in any particular instance was not part of the *mesorah*. Accordingly, their pronouncements with regard to *kinim* or Anisakis, if based on erroneous information, are invalid, not integral to the *mesorah*, and should be reversed.

Voluminous material has been written with regard to the Anisakis issue. But not a single contemporary writer has espoused the position that *Hazal* were misinformed but that their halakhic pronouncements regarding parasites are nevertheless infallible. Hence my assertion that resolution of the contradiction between the halakhic presupposition and contemporary science is irrelevant to an analysis of the Anisakis issue. My claim that no rabbinic scholar has forbidden *all* piscatorial parasites is factually correct. I have not claimed that such a conclusion is logically impossible. [The phrases "historically correct" and "historically accurate" obfuscate the issue and are misplaced in halakhic dialectic; the focal point is analytic cogency and factual accuracy.] I have stated that such an analysis is rejected, at least impliedly, by all contemporary authorities. That has nothing to do with either refusal to confront "two millennia of error" or "an appeal to consequences." Rejection of the position that all parasites

should be forbidden is nothing other than conscious denial of scientific error on the part of *Hazal* or a non-literal understanding of the notion of spontaneous generation posited by them.

Nor is the statement that no contemporary authority has banned all parasites in any way misleading. The position of R. Isaac Lampronti regarding *kinim* expressed in his *Pahad Yizhak* was cited in my article for the purpose of showing that, despite that opinion, no rabbinic scholar has relied upon—or even cited—that stringent view and then proceeded to ban all piscatorial parasites. The conclusion that all parasites are forbidden is rejected by all contemporary authorities but it may well be consistent with *Pahad Yizhak*'s understanding of the matter.

The rule with regard to *kinim* is posited by the Gemara, *Shabbat* 107b, as integral to the definition of *shohet* or *netilat neshamah*, one of the thirty-nine categories of labor forbidden on *Shabbat*. Each of those types of labor was employed in construction of the Tabernacle. *Eilim*, i.e. rams, were slaughtered in order to obtain their hides for use as a covering for the Tabernacle. License to kill *kinim* on *Shabbat* is predicated on the notion that only creatures comparable in nature to the *eilim*, i.e., animals that reproduce sexually, may not be put to death on *Shabbat*.

The underlying principle is an explication of a *halakhah le-Mosheh mi-Sinai*, a tradition received by Moses at Sinai, involving establishment of the parameters of a particular forbidden form of labor. *Hazal*'s analysis may be entirely correct but exclusion of the class of animals that reproduce asexually may represent the exclusion of a null class. If so, *Hazal* were simply wrong—not in their analysis of a *halakhah le-Mosheh mi-Sinai*, but in their scientifically erroneous application of the principle.

Most, if not all, would regard the thesis, as presented, *viz.*, that *Hazal* erred in failing to recognize that the *mesorah* regarding spontaneous reproduction is applicable only with regard to a null class, to be heretical. But that does not mean that it should not be enunciated, if for no other purpose than to identify the doctrinal point in controversy, *viz.*, whether or not there exists a *mesorah* with regard to *kinim*. Indeed, it is not at all clear that the Gemara posits a *halakhah le-Mosheh mi-Sinai* with regard to *kinim* as a specific instantiation of the principle posited by *Hazal* regarding *Shabbat* restrictions. The *mesorah* may well have been limited to the thesis rather than inclusive of any specific application. Moreover, R. Isaac ha-Levi Herzog, *Teshuvot Heikhal Yizhak*, *Orah Hayyim*, no. 29, quite cogently asserts that the principle is applicable to microbes that reproduce by means of cell division; if so, it is not at all a null class.

The position that *Hazal* were correct in theory but erred in application may have been espoused by *Pahad Yizhak* who, incidentally, was

only willing to rely upon that analysis *le-humra*, as a matter of stringency, in forbidding the killing of *kinim* on *Shabbat*. Alternatively, *Pahad Yizhak* may have ascribed sexual reproduction of *kinim* to *nishtaneh ha-teva*, i.e., a change in the nature of the physical order. On either analysis, as noted earlier, had *Pahad Yizhak* been confronted with the Anisakis issue, he might similarly have prohibited all parasites *le-humra*.

2. *Nishtaneh ha-Teva*

Ascription of scientific error to *Hazal* in this matter was rejected by virtually all subsequent rabbinic authorities, not only for doctrinal reasons, but also because they understood full well—as does any person who has even a passing familiarity with philosophy of science—that Pasteur’s rejection of spontaneous generation is an empirical generalization and hence not logically compelling.¹ Indeed, physicists have demonstrated that a massless subatomic particle known as a Goldstone boson can be spontaneously created in a vacuum² and do not regard the generation of life in a laboratory as merely grist for science fiction. Even more strikingly, evolutionists would have us believe that all life on planet Earth arose out of some type of primordial chemical soup. Let us remember that spontaneous generation is not synonymous with generation *ex nihilo*. *Hazal* asserted that *kinim* are generated by “sweat” and parasites by the body of their hosts. Granted, the lice we observe are all generated sexually. Nevertheless, there is no scientific reason to assume that an asexually reproducing species did not exist in talmudic times but became extinct over the course of millennia or that members of that species metamorphosed into sexually reproducing lice through intra-species evolutionary processes.³ [I will not enter into the more intriguing question of, if the latter is the case, whether their descendents, *viz.*, present-day lice, may be killed on *Shabbat*.] The same thesis applies to

¹ This is not to assert that empirical generalizations are excluded from halakhic cognizance. Concepts such as *rov* and *hazakah* are certainly examples of empirical generalization. Recognition that empirical generalizations are not compelling means only that they do not serve as logical grounds to deny any and all exceptions.

² See M. Chaichian and A. Demichev, *Path Integrals in Physics; Volume II: Quantum Field Theory Statistical Physics and other Modern Applications* (Philadelphia, 2001), p. 89.

³ See R. Nissim Karelitz, *Hut ha-Shani*, vol. I, chap. 15, sec. 1, p. 125; R. Shalom Joseph Gelber, *Orhot Shabbat*, I, 14:30; and R. Shammai Kehos Gross, *Teshuvot Shevet ha-Kehati*, III, no. 126. See also Herman Branover, “Torah and Science: Basic Principles,” *Encounter: Essays on Torah and Modern Life*, ed. H. Chaim Schimmel and Aryeh Carmel (Jerusalem, 1986), p. 239 and this writer’s “New York City Water,” *Tradition* (Winter, 2004), pp. 82-84.

Anisakis as well. The basic principle is well-known in rabbinic literature and amply supported by a plethora of empirical phenomena described in rabbinic texts yet alien to our experience. The principle is encapsulated in the phrase “*nishtaneh ha-teva*—nature has changed.”⁴

3. Sub-Clinical Phenomena

Alternatively, and, to my mind, more plausibly, *Hazal* in numerous matters ignored all sub-clinical phenomena. They were phenomenologists, not biologists. Species whose sexual procreation is not phenomenologically observable are quite different from the paradigmatic *eilim* referred to in *Shabbat* 107b whose mode of reproduction is readily apparent upon gross observation.⁵ The same is applicable to the definition of creatures that “swarm in water.”

There is nothing contrived or anachronistic in that explanation. Rather, it is but another manifestation of the accepted principle that Halakhah is predicated upon gross phenomena. As noted earlier, halakhic authorities have uniformly recognized that dietary restrictions do not apply to the imbibing of subvisual creatures. It is similarly arguable that references to regulations applicable solely to species that engage in sexual reproduction are intended as references to *perceivable* sexual reproduction;⁶ hence, sexual reproduction that is not perceived as such is treated by Halakhah as if it occurred spontaneously.⁷ Put somewhat differently,

⁴ A number of such phenomena are cited by R. Israel Lipschutz, *Tiferet Yisra'el, Bekhorot* 3:4. For a fuller discussion see R. Neryiah Moshe Gotel, *Hishtanut ha-Teva'im be-Halakhah* (Jerusalem, 5758).

⁵ If this analysis is correct, the *kinim* described by the Gemara cannot be identical to present-day head lice since eggs of the latter species are clearly visible to the naked eye.

⁶ See R. Chaim Kanievsky, *Derekh Emunah*, IV, *Hilkhot Shmittah ve-Yovel* 4:1, *Bi'ur ha-Halakhah*, s.v. *bein min ha-asabin*, who employs the same principle with regard to the Gemara's categorization of mushrooms as drawing nutrients from the air and hence not classified as vegetables and also to Rambam's reference to plants that appear during the *shmittah* year “of their own accord.” In each case, the classification, contends Rabbi Kanievsky, is predicated upon human perception rather than upon objective reality. See also Leo Levi, *The Science of Torah: The Scientific Knowledge of the Talmudic Sages* (New York, 2004), pp. 49-50.

⁷ The Gemara, *Shabbat* 107b, questions the statement that *kinim* do not reproduce sexually on the basis of the dictum “The Holy One, blessed be He, sits and sustains [all creatures] from the horns of the eggs of *kinim*” or, according to Rashi, “tiny *kinim* as they emerge from the eggs.” Ostensibly, the Gemara finds evidence that *kinim* reproduce sexually in the employment of the term “eggs of *kinim*” in that dictum. If so, it might be argued that, if the sexual nature of reproduction was acknowledged by the Gemara in its original contention but purported to be subvisual, the term “eggs of *kinim*” might be understood as referring to microscopic eggs and should not have been regarded as anomalous.

Halakhah is not based upon ontological reality but upon phenomenological perception.⁸

4. Exoteric and Extraneous

R. Meir Simchah ha-Kohen of Dvinsk, *Mesbekh Hokhmah*, *Parashat Bo*, cites R. Elijah of Vilna who maintains that the reasons or considerations advanced by the Sages in explanation of the various ordinances that they promulgated are not exhaustive in nature; rather, for reasons best known to themselves, they frequently reserved other considerations *in pecotre*. In actuality, that position was formulated much earlier during the Geonic period in a responsum of Rav Ha'i Ga'on as recorded in *Teshuvot ha-Ge'onim*, ed. Mekizei Nirdamim (Lyck, 5683-5684), no. 1.

In a comment published in R. Eliyahu Dessler's *Mikhtav me-Eliyahu*, IV, 355, note 4, the editor reports that the Rabbi Dessler resolved the problem concerning *kinim* in a similar fashion: The halakhic ruling was transmitted to the Sages as a tradition received at Sinai and, although they endeavored to present a reasoned basis for that tradition, the rationale they advanced was neither exhaustive nor necessarily accurate. In his words:

The explanation does not determine the law. Rather the opposite: the law determines the explanation and the reason mentioned in the Gemara is not the sole possible reason with regard to the matter and if, at

It may be countered that, even if the thesis of spontaneous generation is understood literally, there is no reason to presume that *kinim* arise spontaneously as mature creatures. Certainly, divine providence would perforce necessarily extend even to spontaneously generated *kinim*. If so, God's providence would indeed be necessary regardless of whether or not eggs of *kinim* are visually perceivable and regardless of whether or not they can be perceived as reproducing sexually. How then, does the cited dictum negate the assertion that *kinim* are the product of spontaneous generation?

The Gemara's objection is indeed based upon employment of the phrase "eggs of *kinim*," but the objection need not be understood as based upon the literal description of *kinim* as arising from eggs and hence the conclusion that they are sexually reproduced; rather, the objection is that the dictum indicates that divine providence is perceived by man as being exercised over development of those minuscule eggs, thereby indicating that the reproductive process is entirely usual, i.e., sexual in nature and perceived as such.

⁸ Cf., the comments attributed to R. Shlomoh Zalman Auerbach in *Halikhot Sadeh*, no. 51 and by R. Joshua Neurwirth, *Shemirat Shabbat ke-Hilkhatah* 2nd edition (Jerusalem, 5739) 3:105 as well as the comments attributed to R. Eliyahu Dessler, *Mikhtav me-Eliyahu*, ed. Aryeh Carmel, IV (Jerusalem, 5743), 355-356, note 4 and R. Shimon Schwab, *Kol Torah* (Tishri 5757), p. 217. See also R. Pesach Eliyahu Falk, *Madrikh le-Bedikat Tola'im: Guide to the Inspection of Fruits and Vegetables for Insects* (Gateshead, 5744), p. 92.

times, they presented reasons that are in accordance with the knowledge of nature of their day it is our obligation to seek other explanations in accordance with the knowledge of nature of our day by means of which the law will remain steadfast in its place.

. . . But even if a proper reason is not found, we believe with perfect faith that the law is a true law and we hope to God that He will enlighten our eyes to find an appropriate explanation.

II. SCIENTIFIC ERROR AND HALAKHIC INERRANCY

Many rabbinic scholars, beginning with *Pahad Yizhak*'s mentor, R. Judah Brill, did affirm the scientific inerrancy of *Hazal*, at least in matters pertaining to Halakhah. Although R. Sherira Ga'on⁹ and later R. Abraham ben ha-Rambam¹⁰ did not accept all dicta of *Hazal* regarding medical care, natural science and astronomy as factually correct, *Hazon Ish*, *Kovez Iggerot*, I, no. 15, certainly espoused a much broader concept of inerrancy. *Hazon Ish* writes:

Among the principles of faith is that everything stated in the Gemara, whether in the Mishnah, the Gemara, or the Aggadah, are matters revealed to us by means of prophetic power which is the power of contact of the transcendental intellect with the intellect entwined in the [human] body in a time that prophecy was an available phenomenon. The holy spirit is the travail of penetrative thought with great exertion and diligent study, such that one is imbued with additional knowledge and understanding beyond the natural.

We shudder to hear casting of doubt with regard to the words of *Hazal*, whether in Halakhah or Aggadah, [which is] tantamount to hearing

⁹ See *Ozar ha-Ge'onim*, ed. B. M. Lewin (Jerusalem, 5744), X, *Gittin* 68b, *Ozar ha-Teshuvot*, no. 376. Cf., Abraham S. Abraham, *Lev Avraham*, II (Jerusalem, 5738), chap. 14, sec. 8 and the comment of R. Shlomoh Zalman Auerbach, *ibid.*, p. 19. R. Sherira Ga'on's observation is limited to medical remedies recorded in the Gemara.

¹⁰ See, "Ma'amar al odot Derashot Hazal le-Rabbeinu Avaraham ben ha-Rambam Zal," *Kovez Teshuvot ha-Rambam* (Leipzig, 5619), p. 41. That treatise was also published in *Kerem Hemed*, II (5676), 7-16 and in *Rabbeinu Avraham ben ha-Rambam: Milhamot ha-Shem*, ed. R. Reuven Margolies (Jerusalem, 5713), pp. 81-98 and also included in the prefatory material published in the Vilna edition of *Ein Ya'akov* (Vilna, 5637) and subsequent reprints as well as in the introduction to the Vilna edition of *Midrash Rabbah* (Vilna, 5603). For a discussion of the provenance and authenticity of that statement see R. Moshe Meiselman's forthcoming work, *The Torah of Science*, chapter 3.

blasphemy, Heaven forfend. One who departs from this is, according to our *mesorah*, as one who denies the words of *Hazal*: his slaughter is *nev-eilah* and he is disqualified as a witness, etc....

Assuredly, *Hazon Ish* would not deny that certain aggadic statements are hyperbolic in nature and that others must be understood allegorically but he would certainly insist that halakhic pronouncements are prophetically inspired and, properly analyzed and understood, are immutable.

The claim that “scores of Rishonim and Aharonim are of the view that the Sages were not infallible in such matters,” i.e., in matters of Halakhah, is simply not true. Those authorities who ascribed error to *Hazal* did so only in the context of non-halakhic pronouncements. With the exception of *Pahad Yizhak*, I am hard pressed to identify any *rishon* or *aharon* who believes that, *properly understood*, *Hazal* were fallible in their specific halakhic pronouncements. Certainly, Rabbi Joseph Kafah, who also prohibits killing *kinim* on *Shabbat* only *le-humra*, makes that statement only “*le-fi ha-mezi’ut ha-muhletet ha-yom*—in light of today’s definite reality.” That phrase is readily understood as denoting contemporary empirical reality but not necessarily the reality of the talmudic period. *Nishtaneh ha-teva* is in no way a challenge to the inerrancy of *Hazal* in matters of Halakhah.

The sources cited in the letter to the editor have been variously misread or misunderstood:

Rabbi Herzog does *not* acknowledge that the Gemara relied upon an erroneous belief in spontaneous generation. Rabbi Herzog’s interlocutor, a certain Professor Strauss, seems to have challenged the scientific accuracy of *Hazal*. Rabbi Herzog expresses awareness of current rejection of spontaneous generation but declares, “We have only the words of *Hazal*.” The phrase “*anu ain lanu le-inyan ha-Halakhah ela divrei raza!*” does not at all indicate that he believed *Hazal* to have been in error. Indeed, the phrase he employs tracks the language of Rambam, *Hilkhhot Shebitah* 10:3 regarding *treifot*. Rambam, both in that context and in *Hilkhhot Rozeah* 2:8, regarding human *treifot*, does not at all ascribe error to *Hazal*; instead he speaks of changed medical reality:

Even if it appears on the basis of medical methods in our possession that some of [the *treifot*] are also not mortal and it is possible that [the animal] may survive them *ein lekha ela mah she-manu hakhamenu*—you have only that which the Sages enumerated—as it is stated “in accordance with the Torah they have taught you.”¹¹

¹¹ *Hilkhhot Shebitah* 10: 3.

Rabbi Herzog states only that *kinim* are not relevant to the problem submitted for his consideration and that he has no cause to address the issue of spontaneous generation because of its irrelevance to the question posed to him, *viz.*, the permissibility of adding antibiotics to milk containers on *Shabbat* in order to kill germs. His reasons for ruling permissively are: a) microbes certainly do not reproduce sexually; and b) they cannot be perceived by the naked eye.

III. INFALLIBILITY OF THE *BET DIN HA-GADOL*

On a superficial reading, the notion that *Hazal* were wrong on the facts but that Halakhah predicated upon those facts nevertheless remains in force because those rulings were canonized by the Sages of the Talmud and that such canonization is nothing more than a “nationwide acceptance of their authority” sounds very much like a Reconstructionist reading of the Oral Law, absent the saving grace of an ethical purpose. Such a definition of canonization of factually baseless Halakhah is nothing more than a description of tenacious adherence to quaint folk practices preserved, at best, in order to promote some ethnic or social purpose.

If a plausible argument is to be advanced in support of halakhic constancy in face of demonstrable empirical error, it would presumably be based upon *Sefer ha-Hinnukh*’s exposition of commandment no. 496, “and you shall not turn aside from that which they shall teach you, either to the right or to the left” (Deuteronomy 17:11), in which *Sefer ha-Hinnukh* declares that the Torah prefers error rather than halakhic anarchy-- a far more powerful argument than “nationwide acceptance of authority.” Development of that concept might result in the notion of halakhic infallibility vested in the Sages of the Torah. Such a fundamentalist halakhic concept would be predicated upon the dictum of the *Sifri*, Deuteronomy 17:11, “Even if he tells you of right that it is left and of left that it is right, hearken unto him.” Conceivably, an appeal to that proof-text would serve to substantiate a doctrine of halakhic inerrancy despite scientific fallibility. Nevertheless, to the best of my knowledge, such a doctrine has never been formulated by any credible authority.

The dictum of the *Sifri*, which is cited both by *Sefer ha-Hinnukh* in elucidating the commandment “you shall not turn aside from that which they shall teach you,” and Ramban in his commentary on that verse, *i.e.*, that the commandment bids us to accept the teachings of the Sages “even if they tell you of right that it is left and of left that it is right,” is not applied by either of those authorities to empirically demonstrable factual

error. In explaining the *Sifri*, every early-day authority of whom I am aware presents examples of rulings that are readily understood as the product of fallacious halakhic dialectic rather than of empirical error.¹² Rambam, *Hilkhot Mamrim* 1:2, *Sefer ha-Hinnukh* and Ramban, both in his *Commentary on the Bible*, Deuteronomy 17:11, and in his glosses to Rambam's *Sefer ha-Mizvot*, *shoresh* 1, relate the commandment to interpretation of the Oral Law on the basis of halakhic dialectic.

Moreover, the statement of the *Sifri* seems to be contradicted by the Palestinian Talmud, *Horiyot* 1:1. The Palestinian Talmud cites the verse in question and comments, "It might be thought that [even] if they tell you of right that it is left and of left that it is right you shall obey them, therefore, it says 'to go right and left' [i.e.,] only if they tell you regarding right that it is right and of left that it is left."

In addition, the Mishnah, *Horiyot* 2a, declares that if the *Bet Din ha-Gadol* rules permissively but one of its members or a scholar of stature recognizes the *Bet Din* to be in error but nevertheless follows its decision in personal practice, he is liable to bring a sin-offering as an atonement. The Gemara, *Horiyot* 2b, explains that the scholar of whom the Mishnah speaks acted in error in presuming that he may rely upon even an erroneous ruling of the *Bet Din ha-Gadol*. That statement seems to be at variance with *Sifri*'s declaration that one must follow the teaching of the *Bet Din ha-Gadol* even if they teach "of right that it is left and of left that it is right."

R. Elchanan Wasserman, *Kuntres Divrei Soferim* (Pietrokow, 5684),¹³ no. 4, secs. 8-9, incisively observes that this ostensive contradiction was dispelled by Ramban. In his glosses to Rambam's *Sefer ha-Mizvot*, *shoresh* 1, Ramban declares that a scholar living in the days of the Sanhedrin who was convinced that the *Bet Din ha-Gadol* erred in its pronouncement concerning a matter of Halakhah dared not permit himself that which he was convinced is forbidden. That is so because, as declared by the Palestinian Talmud, he may abide by the ruling of *Bet Din ha-Gadol* "only if they tell you regarding right that it is right and of left that it is left," Only if he presents his reasons and arguments before the *Bet Din ha-Gadol* and, upon deliberation, they are rejected is he permitted to accept the decision of the *Bet Din ha-Gadol* and to act accordingly.

¹² See, for example, R. Baruch ha-Levi Epstein, *Torah Temimmah*, Deuteronomy 17:11, sec. 62, who forcefully declares that the dictum does not extend to empirical error.

¹³ Republished in R. Elchanan Wasserman, *Kovez Shi'urim*, II (5720).

R. Elchanan Wasserman, *Kuntres Divrei Soferim*, no. 4, sec. 9, reconciles the apparently conflicting sources by explaining that there is a distinction between matters of fact and matters of deliberative judgment. “You shall do all that they teach you” does not encompass errors of *dvar mishneh*, i.e., matters pertaining either to established Halakhah or to realia, for “such is not ‘teaching’ but ‘mistake.’” With regard to such matters, the *Bet Din ha-Gadol*, when apprised of its error, will retract and it is to such matters that the Palestinian Talmud refers. However, if the dispute involves a matter of *shikul ha-da’at*, i.e., judgment or intellectual evaluation, he must bow to the determination of the *Bet Din ha-Gadol*. If a dissenting scholar presents his case before the *Bet Din ha-Gadol* and it is rejected, dismissal of the dissenting view establishes that the disagreement is with regard to judgment or cogency of reasoning rather than with regard to fact. Decisions of that nature are within the exclusive purview of the *Bet Din ha-Gadol* and are binding even if the *Bet Din ha-Gadol* tells you “of right that it is left” and *vice versa*. In such matters the decision of the *Bet Din ha-Gadol* is binding “even if it is clear to Heaven that the truth is not in accordance with their words.” In such matters the dissenting scholar must accept the teaching of the *Bet Din ha-Gadol* but only after his arguments have been considered and rejected.¹⁴

The most forceful exposition of the notion reflected in the words “Even if they tell you of right that it is left” is probably that of *Teshuvot Rivash*, no. 447. Rivash declares that the commandment “you shall not turn aside from that which they teach you” (Deuteronomy 17:11) demands abnegation of personal conviction in favor of the teachings of *Hazal* because their veracity has been divinely declared; if so, it is human intellect that is weak and fallible. Although perhaps more difficult for the human intellect to accept, that is a far, far cry from a canon vesting the Sages with halakhic infallibility despite recognized factual error. “The law is the law” regardless of its fidelity to truth is indeed axiomatic to many legal systems but in Jewish teaching fidelity to law and fidelity to truth are invariably deemed to coincide.

¹⁴ Reb Elchanan himself, *Kuntres Divrei Soferim*, no. 4, sec. 13, offers a different resolution of the contradiction. He understands the dictum of the *Sifri* to be limited to instances in which the *Bet Din ha-Gadol* evokes its legislative power to “uproot” a biblical law. In such cases they are authorized to declare that “left is right and right is left.” Such pronouncements, by their very nature, cannot be erroneous. Reb Elchanan understands the dictum of the Palestinian Talmud as referring to matters involving interpretation of the Oral Law. In matters of interpretation, according to Reb Elchanan’s analysis, the *Bet Din ha-Gadol* does not enjoy infallibility.

Assuming, *arguendo*, that the dictum “even if they tell you etc.” is global and all – encompassing, its application to the issue of spontaneous generation would require that if (a) the notion of spontaneous generation as described by *Hazal* is to be understood literally and (b) one is also convinced that science has demonstrated that such a phenomenon does not exist and has never existed, one would be required to suspend intellectual judgment regarding the nature of empirical reality in accepting the dicta of the Sages. It does not mandate a contradictory Tertullian-like affirmation of both scientific wisdom and halakhic infallibility.

It is precisely because the doctrine enunciated by *Sifri* does not encompass incontrovertible factual error that some authorities felt compelled to ascribe scientific inerrancy to *Hazal*. Otherwise, they would have declared that *Hazal* were wrong but that their error is inconsequential. In formulating an applicable doctrine, scientific inerrancy and factual inconsequentiality are mutually exclusive.

Let me present a simple example. Let us assume that there exists an authoritative talmudic text stating that the moon is made of green cheese and that, accordingly, the blessing *she-ha-kol* is required before partaking of lunar matter. Suppose an astronaut has returned from a space journey involving exploration of the moon and has brought with him a quantity of moon dust. Suppose further that he is foolish enough to want to taste the moon dust. I do not believe *Sefer ha-Hinnukh* would a) acknowledge that the substance is indeed moon dust and b) rule that a *she-ha-kol* is required. A doctrine of infallibility would require him to contend that either a) the astronaut is lying; b) had the astronaut dug but a bit deeper into the core of the moon he would have retrieved the green cheese described by *Hazal*; or c) over the course of millennia the moon has become petrified and is no longer edible.

IV. THE BINDING AUTHORITY OF THE TALMUD

The sources cited by the author of the letter in support of his thesis are not germane. R. Shlomoh Fisher, *Derashot Bet Yishai*, no. 15, does not set forth the position ascribed to him; he asserts something far less radical. *Kesef Mishneh*, *Hilkhot Mamrim* 2:1, declares that *Amora'im* had no right to dispute rulings of *Tanna'im* and, subsequent to the redaction of the Talmud, authority to reject, dispute or overrule its pronouncements is lacking. *Kesef Mishneh* fails to explain why this is so. R. Elchanan Wasserman, in his *Kuntres Divrei Soferim*, no. 2, explains that the redaction of the Mishnah, and later of the Gemara, was the product of a collective

endeavor of the scholars of those respective periods and, as such, had the status of a decision issued by the *Bet Din ha-Gadol* that can be overturned only by a similar body.

Rabbi Fisher does not accept that thesis as historically accurate and proceeds to explain the matter somewhat differently. Rabbi Fisher cites *Teshuvot Rivash*, no. 399, who writes that an agreement of the multitude to establish a "protection" or "fence" for the Torah is comparable to the original acceptance of the Torah at Sinai and is binding upon themselves and upon their progeny after them. Such restrictions, he declares, are binding "even if they did not accept [the matter] upon themselves by [formal] agreement but, on their own, they conducted themselves [in such a manner] as a protection of the Torah." Rivash posits a sort of natural law doctrine as the source of the legislative authority of the body politic and is so bold as to declare that the binding authority of the Sinaitic covenant itself is rooted in that concept. Rabbi Fisher explains that acceptance of the rulings of the Talmud is of the nature described by Rivash. Those rulings were accepted by the community at large and became binding by the virtue of communal edict. He utterly fails to explain why leniencies or permissive rulings of the Talmud cannot be overturned by later scholars. The very notion of communal authority to establish eternal license to act in a manner contrary to biblical law is without precedent or parallel.

Moreover, it is not necessary to understand Reb Elchanan as insisting upon the convening of a synod attended by all the scholars of Israel as an actual historical event in order to explain the redaction of the Talmud as halakhically equivalent to an act of the *Bet Din ha-Gadol*. There is ample authority supporting the position that, in exercising its legislative and executive prerogatives, the *Bet Din ha-Gadol* was simply acting on behalf of the community as an entity and that those powers are, in actuality, the powers of the community itself; those powers are residually reserved to the community and may be exercised by the community directly.¹⁵ Accordingly, acceptance of the binding authority of the Talmud by the community as an entity, even if such acceptance occurred over a period of time, is tantamount to promulgation by the *Bet Din ha-Gadol*.

¹⁵ See R. Meir Simchah of Dvinsk, *Mesbekh Hokhmah*, *Parashat Bo*, s.v. *ulam* and R. Yitzchak Ze'ev Soloveitchik, *Hiddushei Maran ha-Riz al ha-Rambam*, *Hilkhot Sanhedrin* 5:1 as well as this writer's *Contemporary Halakhic Problems*, I (New York, 1977), 16 and II (New York, 1983), 176f. and his *Be-Netivot ha-Halakhah*, IV, 169-177. See also R. Eliezer Ginsberg, *Am ha-Torah*, *mahadurah* 3, no. 2 (5749), pp. 72-76.

Be that as it may, there is no evidence that a decision by the *Bet Din ha-Gadol*, based upon patently demonstrable empirical error is binding. There is certainly no evidence, nor does Rabbi Fisher assert, that an agreement or acceptance on the part of a *zibbur*, or community, predicated upon demonstrable empirical error is binding. As a halakhic principle, a *kabbalah* entered into in error is null and void. If a doctrine of communal authority regarding Oral Law interpretation is accepted, halakhic canons would dictate a conclusion entirely opposite to that advanced by the author, i.e., it would lead to the conclusion that any halakhic provision accepted on the basis of faulty scientific premises is rendered a nullity and hence not binding.

Rabbi Glasner's comments are similarly not apropos. Rabbi Glasner addresses the same problem that was earlier noted by *Kesef Mishneh* but resolves the matter in an entirely different and highly imaginative manner. In the preface to his *Dor Revi'i*, Rabbi Glasner states that the division of the Torah into the Written Law and the Oral Law was divinely designed in order to enable varying Oral Law interpretations. The prohibition against committing the Oral Law to writing was designed by God to prevent the Oral Law from becoming cast in stone and hence no longer subject to ongoing interpretation. Most striking is *Dor Revi'i's* statement that the very act of committing the Oral Law to writing, as was done by the Sages of the Talmud, transmuted the status of the Oral Law to that of the Written Law and hence rendered it no longer open to reinterpretation. The effect of that thesis is even more far-reaching than the position formulated by Reb Elchanan. The decrees of a *Bet Din ha-Gadol* may be rescinded by a later *Bet Din ha-Gadol*; the Written Law, however, is immutable. Rejecting any notion of reliance upon communal acceptance, *Dor Revi'i* asserts that reducing the Talmud to writing makes it impossible for any future *Bet Din ha-Gadol* to modify any of its rulings.

According to Rabbi Glasner, if the Written Law were to state that the moon is made of green cheese, the halakhic implications would no doubt be irreversible. Once the Oral Law is committed to writing, such an Oral Law statement, according to *Dor Revi'i*, would also become immutable. That is why, according to Rabbi Glasner, neither the Written Law nor the Oral Law could possibly contain such a statement. Of course, Rabbi Glasner does not employ the hypothetical example of an assertion that the moon is composed of green cheese. But he does present a remarkable insight into another statement of *Hazal* that establishes the same point.

The Gemara, *Avodah Zarah* 2b, states that, before revealing Himself at Sinai, God approached each of the nations of the world separately and

offered the Torah to each of those peoples. Each, in turn, demurred. Esau found “Thou shalt not kill” to be beyond his nation’s moral capacity. Ammon and Mo’av found the prohibition against sexual licentiousness too onerous; Ishma’el declined to abjure theft, etc. Only Israel failed to decline. Yet we pronounce a blessing thanking God for having chosen us over all other nations in giving us His Torah! According to the Gemara, God did *not* choose us at all; he peddled the Torah to all and sundry but His offer was rejected. Only Israel was willing to accept the Torah as proffered.

Dor Revi’i states that rejection of the Torah by each of the gentile nations was a rejection on behalf of the respective nations by the wise men of each those nations that was born of intellectual honesty. The *Tanna*, Rabbi Meir, constructed one hundred and fifty arguments to purify the *sherez* but did not verbalize even a single one of them. Presented with a Torah that incorporates an Oral Law, asserts Rabbi Glasner, Esau would have produced superficially convincing arguments rendering the prohibition against homicide nugatory. Ammon and Mo’av would have interpreted licentiousness out of existence and Ishma’el would have found ways and means of circumventing the prohibition against theft. Of course, those endeavors would have been specious, but “where there is an opportunistic will there is a spurious halakhic way.” The wise men of those nations knew their various constituencies and recognized that their compatriots, if given the opportunity, would distort the Torah by means of sophistry without even being cognizant of the fact that their misinterpretations were perversions born of self-interest. Israel was chosen by God and endowed with the moral and intellectual qualities necessary to preserve the Torah and protect it from “*derashot shel dofi*—fallacious interpretations.”¹⁶ I believe it is fair to say that Rabbi Glasner would claim that God bestowed upon the people of Israel the intelligence necessary to ensure that, in expounding the Oral Law and committing it to writing, they would not rely upon specious reasoning.

Rabbi Glasner, in the introduction to his *Dor Revi’i*, s.v. *u-temiha*, does concede that, were present-day scientific information available to the Sages, they would not have permitted the killing of *kinim* on *Shabbat*, nor would they have permitted consumption of worm-infested cheese. Following the clearly implied ruling of Rambam, *Hilkhhot Mamrim* 2:1,¹⁷ he further affirms that a *bet din* is not bound by a ruling of a previous *bet*

¹⁶ Cf., the well-known exposition of R. Judah Lowe, Maharal of Prague, *Tiferet Yisra’el*, chap. 1 and *idem*, *Nezah Yisra’el*, chap. 11.

¹⁷ See *Kesef Mishneh*, *ad loc.*

din it believes to be erroneous even if the earlier *bet din* was greater “in wisdom and number.” However, that possibility, he contends, existed only so long as “the tradition and the law were not written and sealed with an iron pen and the nail of the *shamir*. But since strong necessity brought about that the Oral Law be endowed with permanence for posterity we have no authority to change even a jot of their conclusion and decision” *Dor Revi’i* certainly asserts that the entire corpus of the canonized Oral Law, including provisions based upon erroneous presumptions, is immutable but makes no attempt to advance a theory upon which that assertion is based. He certainly does not base it upon ascription of legislative authority to *vox populi*.

The unformulated thesis may be that canonization of the Oral Law was divinely directed and hence its codified provisions are unalterable because, regardless of the veracity of whatever premises may have been announced, the promulgated rules and regulations reflect divine will. Halakhah is expressive of the will of God and, in permitting codification by man, God confirms that the canonized corpus expresses His will. Thus, codification is self-validating. In effect, in the process of codification, empirical error receives a divine imprimatur as halakhic truth. *Hazon Ish*, of course, differs in asserting that there has been no error but that nature has changed. Nor am I aware of a theory similar to that of *Dor Revi’i* presented in the writings of any halakhic authority. The thesis earlier presented positing that the *mesorah* was designed to codify and preserve perceived reality rather than actuality fills the lacuna left by *Dor Revi’i*.

V. HALAKHAH AS A REFLECTION OF SINAITIC NOMENCLATURE

The thesis that talmudic canonization of rules based upon erroneous scientific theory renders them binding for posterity might perhaps be justified in an entirely different way. *Hazon Ish, Even ha-Ezer: Nashim* 27:3, addresses the problem of the *treifah*. Categorization of certain traumas as causing *treifut* reflects the notion that such wounds will prove to be mortal within a twelve-month period. Yet, we know full well that veterinary science is capable of treating animals that have suffered many of the enumerated wounds and restoring them to good health. Rambam, *Hilkhot Shehitah* 10:13, recognized that fact but nevertheless ruled that the regulations governing *tereifot* remain in place. *Hazon Ish* explains that, although contemporary science has learned how to treat such traumas, in

earlier ages, no cure was available. *Hazon Ish* advances the intriguing thesis that the Torah reflects the empirical reality of the “two thousand years of Torah,” i.e., empirical reality at the time of Sinai and of the age that ended roughly with the redaction of the Talmud. *Hazon Ish*, of course, is speaking only of the veridical phenomena of that age.

In a classic responsum, R. Moshe Sofer, *Teshuvot Hatam Sofer*, *Yoreh De'ah*, no. 338, identifies the halakhic criteria of death and emphatically declares that they are in no way subject to variance. However, the underlying question remains: From what source did *Hazon Ish* derive the proper definition of death? *Hatam Sofer* offers a number of possibilities. Among them is that *Hazon Ish* derived the definition from “the natural scientists of their age.”

From recognition of the Pentateuch as a legal document it follows that every phrase and every word has legal significance. Students of law know that a word used in a statute sometimes has a meaning that is not identical with the meaning one would find in a dictionary. Thus, for example, everyone knows the difference in common parlance between a hospital and a nursing care facility. Nevertheless, for the purpose of some public health statutes, nursing care facilities are categorized as hospitals. Those statutes incorporate a preamble that is, in effect, a short glossary declaring that, for the purpose of that particular statute, the word “hospital” is defined as including, *inter alia*, nursing care facilities. Similarly, when seeking to understand any word in Scripture, it is necessary to appreciate the precise legal meaning of the word. When the contents of the Pentateuch were revealed to Moses he was, in effect, also given a glossary that enabled him to define each and every word. Those definitions are integral to the Oral Law and were passed on to succeeding generations together with the written text.

A precise formulation of the halakhic definition of death is enunciated by *Hatam Sofer*. Death, for halakhic purposes, is defined in terms of physical criteria. *Hatam Sofer* spells out in a clear and concise manner the criteria of death as culled from much earlier halakhic sources. He then turns to the question of associating those criteria with the term “death” as used in the Bible. Essentially, his problem is: how did the Sages of the Talmud arrive at their definition? Generally, such definitions are part of the Oral Law tradition. But one of the theories *Hatam Sofer* advances is that the criteria of death reflect the received wisdom and practice of the scientists of the biblical era. In effect, *Hatam Sofer* says that the word “death” as it occurs in the Bible means what physicians of antiquity would have understood by the term at that time in history. The meaning associated with the word then became enshrined in the biblical system of law

which uses the term in an immutable manner. For halakhic purposes the word retains that meaning for posterity even though its connotation in common parlance may have changed. The word retains that meaning simply because the meaning with which it has been endowed denotes criteria eternally enshrined in the relevant statutes.

Putting *Hatam Sofer* and *Hazon Ish* side by side, it might be plausible to formulate a new thesis and to argue that for all definitional purposes, unless otherwise indicated by *Hazal*, terms employed by Scripture, and hence by Halakhah, are to be construed in accordance with the manner in which those terms were used in the common parlance of antiquity. Such usage, in turn, reflected the accepted wisdom of the era. If so, it is arguable, the word “*eilim*” must be defined in terms of what were regarded as the necessary attributes of an *ayil*, including that it is the product of sexual reproduction. The Torah forbade only the killing on *Shabbat* of creatures having the essential characteristics of *eilim*, i.e., only creatures that the accepted wisdom of the day regarded as belonging to species that reproduce sexually. That definition is objective, but it incorporates elements reflecting the phenomenological and empirical perception of general society. “The Torah speaks in the language of mankind” (*Berakhot* 31b) and the language of mankind does not necessarily reflect objective truth. The fact that perceptions of reality, and hence linguistic definitions, have changed is irrelevant if Halakhah was established for eternity in accordance with the perceptions reflected in the nomenclature of the “two thousand years of Torah.” Most fundamentally, the authority for such provisions of Halakhah is derived directly from revelation at Sinai rather than from communal acceptance of the corpus of Halakhah.

The theories of *Hatam Sofer* and *Hazon Ish* are well known. The sole *novellum* lies in their conflation. The fact that such a thesis has heretofore not been propounded is itself reason to make one pause. Since other theories that have been advanced are entirely cogent, perhaps the thesis is superfluous. What can be said in its favor is that it does not rely upon the view of an individual writer such as Rabbi Fisher or Rabbi Glasner, each of whom candidly concedes that he is rejecting the views of numerous highly-respected and more authoritative predecessors.

VI. AN AFTERWORD

Even if the view of *Dor Revi'i* or of Rabbi Fisher would lead to the conclusion attributed to them in the letter to the editor, little would be accomplished. Halakhic decision-making is not a matter of picking and

choosing among precedents consigned to the cutting floor of Halakhah. It most certainly does not consist of seeking resolutions unencumbered by “unappealing consequences” and then engaging in sophistry to justify those resolutions.

Again, I must emphasize that the foregoing may be germane in addressing the apparent conflict between science and Halakhah and even to the halakhic status of *kinim* but is totally irrelevant to the modern-day issue of Anisakis.

There is one point that I have not addressed in this response. If *Hazal* were not describing the Anisakis, what were they describing? The short answer is that I am in no way responsible for providing an answer to that question. There are many matters of which I am ignorant and many questions for which I have no answer. But it has been established that *Hazal* were not describing the modern-day Anisakis in ruling that certain parasites are permissible.

Nevertheless, I did answer that question in my article and it is disingenuous to pretend that I did not. Among the possibilities are: 1) the parasite they described is extinct; 2) it has mutated into the present-day sexually reproducing Anisakis; 3) some Anisakis may arise in the flesh of the fish and others spawn in water; 4) *Hazal* were referring to other piscatorial creatures of which there is no dearth. One who believes that *Hazal* were simply wrong may or not be guilty of heresy but should be intellectually honest in recognizing -- as did *Pahad Yizhak* and Rabbi Kafah before him -- that, since no satisfactory theory leading to a different conclusion can be established with certainty, the canons of halakhic decision-making would compel the conclusion that, if *Hazal* were indeed ignorant of elementary scientific facts, all parasites are forbidden, at least by reason of doubt. Unless, of course, that person rejects the canons of halakhic methodology.

I conclude with a citation of the words of Maharal of Prague in the opening section of *Be'er ha-Revi'i* (The Fourth Well) of his *Be'er ha-Golah*. With regard to his own explanations of difficult aggadic passages, Marahal writes:

I ask that . . . if the reader. . . reads those words and they do not enter his heart that he again read and reflect further, for these words will enter into the heart of the reader only upon much, much reflection since such [is the nature of] all true and correct words, [i.e. they] appear far-fetched in the initial period of reflection but in the end they reveal and illuminate as [does] the sun at noon . . . But do not say . . . that since the explanation does not enter the heart . . . there is no further explanation and, Heaven

forefend, ascribe defect to the words of the Sages Therefore, I request and beseech . . . that, if subsequent to reflection [the reader] will not accept [my] words, he ignore my words, regard them as if they had not been said, and regard the words of the Sages as a sealed book.

