

Who is the "Author"?

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NO SUBJECT PRODUCES SHARPER DIVISIONS among contemporary Jews than that of the Halakhah. Dr. Gordis, in his article, "A Dynamic Halakhah: Principles and Procedures," displays great courage as well as erudition in pursuing so thorny a problem. The term Halakhah, which has more than one meaning, will here be used as employed by Dr. Gordis, to refer to the entire legal part of the Jewish tradition not contained in Scripture, which includes ritual, domestic relations, civil, and criminal law. The Halakhah is assumed, traditionally, to have been transmitted orally until first written down in the Mishnah (circa 200 C.E.), and has since that time been explicated in a variety of forms, in commentaries, codes, and responsa. The thesis of Dr. Gordis' article is that the Halakhah is "open" and "dynamic," which, I take it, means that the Halakhah is receptive and responsive to new ideas and influences, and is, therefore, characterized by continuous change and advance.

In approaching the article, the question that must first be resolved is Dr. Gordis' purpose in writing it. The answer seems evident that it is not simply to present a scholarly exposition of the nature of the Halakhah, but, rather, to propose and justify a course of action for the present, namely, that just as the Halakhah in the past has changed to meet new economic, political, social and cultural conditions, so it can and should now meet such new conditions dynamically. Implied, rather than explicitly stated by Dr. Gordis, is the recognition (shared by many) that the Jews are today living in a period of greatly changed conditions from times past when the Halakhah held undisputed sway over Jewish life, and that the Halakhah must, therefore, advance, to meet the new needs, particularly in the areas of ritual and domestic relations law, that these changes have produced. If this understanding is correct, then it must be stated, at least in my view, that Dr. Gordis has taken only the very first steps toward achieving this goal. The fundamental reason for this is not to be found in what he has written, but in what he has left unsaid. What I mean is amplified in the following four observations.

1. Dr. Gordis does not state who, in his opinion, "authored" the Halakhah. This point is critical for the basic thesis that he wishes to present: that the Halakhah is open and dynamic. Historically, Jews have taken two general positions regarding the authorship of the Halakhah: that "God" is the author (the term "God" as used here refers to a theistic, absolutistic deity); and that humans are the authors. (Jews who have maintained that "God" is the author include the Pharisaic and Orthodox

Jews; among those who have maintained human authorship are the Sadducaic and Reform Jews.) We may take it as granted that if "God" is the author of the Halakhah, then no human has the right to change any of its provisions. The reason is self-evident. If the perfect "God" is its author, the Halakhah must be accepted as perfect as well, — the perfect "God" would not create an imperfect "Law." Accordingly, since the "Law" is already perfect, it makes no sense for any changes ever to be made in it, since any change in perfection can be only to imperfection. On the other hand, if humans created the Halakhah, and humans clearly are always fallible, then it follows that the Halakhah is fallible as well. Accordingly, a human Halakhah may be presumed to require periodic reexamination and change. New and superior intellectual and moral insights arise in the course of human history, and the Halakhah, if it is to be the highest expression of "Law," certainly must reflect and incorporate these insights.

Thus, the question of whether the Halakhah is "open and dynamic" is ultimately a theological question and can be decided only by a theological answer. If "God" authored the Halakhah it cannot be changed. If, however, humans wrote the Halakhah, then other humans have the right, if not the duty, to review and change its provisions periodically. Had Dr. Gordis decided the question of authorship at the outset of his article, the basic point of the article would have been immediately determined. A Halakhah authored by "God" cannot be open and dynamic; a Halakhah authored by humans can, and should, be.

2. The objection might here be raised that Dr. Gordis did, at least by implication, resolve the question of the authorship of the Halakhah. For he does cite a number of instances in which halakhic rules and regulations were changed by Jewish religious authorities. If there were changes made in the Halakhah by humans does this not mean, by the logic described earlier, that the Halakhah must be human in origin, since we may assume that no Jewish religious leader would presume to alter "God's" revealed commandments? Unfortunately, the instances that Dr. Gordis cites are not definitive. That is to say, an argument can be made that the changes in the Halakhah referred to are not "changes" at all, but optional courses of action allowed for and prescribed by the Halakhah itself. Consequently, even though Dr. Gordis shows instances of ostensible change in the Halakhah, these in no way demonstrate the real and substantial changes that would unequivocally prove human authorship.

3. Determination of whether the Halakhah is of divine or human origin would resolve another difficulty in Dr. Gordis' article. This is his apparent assumption that the Halakhah has authority over all Jews, that is to say, all Jews have an obligation to obey its laws, particularly the ritual and domestic relations regulations which, in Orthodox and Conservative Judaism, are primarily operative in our time. Surely, a reasonable case must be made to support the position that the Halakhah has such authority before any Jew has an obligation to obey it. No such case is set

forth by Dr. Gordis. The reason is, of course, that the question of the authority of the Halakhah over Jews is intrinsically related to the question of the authorship of the Halakhah. If “God” is the author of the Halakhah and has commanded the Jews to observe its laws, then we may all agree that there is an obligation on the part of the Jews to observe them. If humans, on the other hand, are the authors of the Halakhah, no matter how profound these humans may be, the Jews are still not obliged to obey it. For no humans have the right to impose their personal religious rules and regulations on others. Succinctly stated: “God” ipso facto has authority over the Jews; Jews over their fellow Jews do not.

4. Setting aside the theological question of the authorship of the Halakhah, we may turn our attention to still another problem. Dr. Gordis says that it is authoritative and at the same time open and dynamic. Several principles are enumerated which are said to guide the changes in the Halakhah and thus enable it to be open and dynamic. The difficulty that arises here is this: do not the principles of change which Dr. Gordis lays down, when applied consistently, undermine the stability of the Halakhah to the point where it cannot exercise authority? If persons, by carrying the principles of change through to their logical conclusions, can nullify or abolish any rules or regulations of the Halakhah that they wish, is not the authority of the Halakhah completely subverted and its character as “law” entirely destroyed? If so, then is not Dr. Gordis’ notion that the Halakhah can be authoritative and, at the same time, open and dynamic, a practical, if not theoretical, impossibility? The following analysis of his principles of change, (they appear below in italics,) shows clearly the difficulties that arise when they are consistently applied.

a. *The Halakhah may be changed in response to new social conditions.* One new social condition is the acceptance by many persons of extra-marital affairs. Accordingly, the halakhic law against adultery (which has its origins in the Bible) may be abrogated.

b. *The Halakhah may be changed in response to new economic conditions.* One (relatively) new economic condition is the need to work on the seventh day. Accordingly, Shabbat on the seventh day may be abrogated.

c. *The Halakhah may be changed in response to new ethical insights.* One dramatic new ethical insight is the right of women to equality. Accordingly, the notoriously discriminatory laws of the Halakhah against women may be abolished. Jewish women can be given the right to divorce their husbands if they wish, instead of the husbands being the only ones who can initiate divorce proceedings and give a *get*. The status of ‘*agunah*’ can be abolished by instituting an “Enoch Arden law,” which permits a wife to be divorced or to remarry without liability after an unexplained absence by her husband for a set period of time.

d. *The Halakhah may be changed to strengthen Jewish survival.* Great numbers of Jews find the Halakhah an obstacle to a meaningful personal Jewish existence. For them, the Halakhah may be abolished.

e. *The Halakhah may be changed in response to the popular will.* Probably the majority of Jews, certainly in America, do not find the dietary laws meaningful. Accordingly, the dietary laws may be nullified.

Of course, Dr. Gordis has no intention of having the principles of change he lays down used to abolish the Halakhic provisions to which they have been applied above. Yet, if the changes in the Halakhah that these principles can effect cannot be clearly stated, they are nothing but mere historical abstractions without relevant and significant contemporary application. Idle abstractions do not make the Halakhah "open and dynamic." Indeed, the inability of the Halakhah to change is clearly seen in Dr. Gordis' own description of the tortuous but fundamentally unsuccessful methods that have been developed to deal with the problem of the *'agunah*. The inequity and immorality of keeping a woman an *'agunah* is clear to every modern person. The inability of the Halakhah to provide an ethical solution to her problem symbolizes the Halakhah's paralysis, generally, in the face of the challenges and conditions of contemporary life.

Where does all this leave us? Is the dialogue that has been initiated in these pages of JUDAISM now over? I would hope not. I believe that Dr. Gordis, in presenting his point of view regarding the Halakhah, and by allowing JUDAISM to invite comments from persons representing a spectrum of differing positions, has performed a heroic act for the general Jewish community. There is little question that Jews are under siege by the modern age and that our very survival is at stake. It is also clear that without a relevant and significant religious Jewishness, the Jewish community has little chance to endure. But which form will that religious Jewishness take? This question, I believe, must ultimately be resolved by the community itself. Personally, as I have argued elsewhere, I do not think that halakhic Judaism is able to meet the ultimate religious needs of ever-increasing numbers of Jews in our time. Halakhic Judaism is chained to the past; its machinery of change is practically non-existent, and its fallible human origins are, upon careful analysis, all too clear. It is in a non-halakhic Judaism of freedom and continually creative change that I believe the future lies. Still, it is critical to bear in mind that if the Jewish community wishes it, there is room for halakhic and non-halakhic Judaisms to exist side by side, not only in friendship, but in mutually enriching dialogue. Can halakhic Judaism change to the point where it will accept and recognize non-halakhic Judaisms? Certainly, non-halakhic Jews have much to learn from Dr. Gordis, whose massive erudition may still prod the Halakhah to contemporary responsiveness.

What is most important, however, is that the Jewish community survive; and this can occur, I believe, only if the community has access to all forms of religious Jewishness, halakhic and non-halakhic alike. JUDAISM has begun this life-giving and unifying process of exposure. We shall all be the poorer if it does not continue.