On Changes in Liturgy and Customs in General

By: DANIEL SPERBER

1.

In 2010 I published a book entitled "On Changes in Jewish Liturgy: Options and Limitations." Prof. Aryeh Frimer then wrote a review of my book in *Ḥakirah* 12, 2011, pp. 65–87. On the one hand he was graciously complimentary of my writing. But on the other hand, he was critical of my suggestion that the "foremothers" could be added to the forefathers in our benedictions.

His criticism was threefold: Firstly, some of the changes in the liturgy that I documented were in elective prayers, but not obligatory ones, and I did not clearly distinguish between these two categories. Secondly, he claimed that all these changes were ex post facto *be-diavad* but one could not recommend any such changes a priori, *le-khatḥilah*. Thirdly, the first and last three benedictions of the *Amidah* have a special status, as opposed to the middle ones, a distinction I did not clearly make. So while there may be many variations in the middle ones, the opening and closing ones have not been "tampered with… for more than a millennium." (p. 77). Finally, inclusion of the *Imahot* is "not only a theological misrepresentation…. [but also] is intellectually dishonest" (p. 12).

Now I would like to respond to what might appear to be serious cogently argued and persuasive criticisms. For it is always a pleasure for

---

Rabbi Professor Daniel Sperber is the author of a multi-volume series on the history of Jewish law and customs, as well as tens of books and hundreds of monographs dealing with a wide range of halakhic, linguistic and historical subjects. He was awarded the Israel Prize in 1992, has taught at Bar-Ilan University in the Departments of Jewish History and Talmud since 1968, and now is president of the Bar Ilan's Institute of Advanced Torah Studies. He has served as a communal rabbi for the last 40 years in several congregations. From 1994 until 2005 he served as Chairman of the Committee on Zionist Religious Education at the Ministry of Education, and for the past several decades he has been involved in interreligious dialogue, also representing the Israeli rabbinate in this capacity. Daniel and his wife Chana are parents of ten children.

me to read Rabbi Prof. Frimer's reviews of my writings, and the ongoing controversies between us are, I believe, a מחלוקת לשם שמים שעתידה להתקיים.

1) Prof. Frimer knows perfectly well that I am fully aware of the difference between elective prayers and obligatory ones. The point I wanted to make is that over the generations both the public and the Rabbis blurred the distinctions between them in certain aspects. Thus, they applied the principle of מטבע שטבעו חכמים in the very broadest manner. And we are acquainted with a considerable body of folklore such as the tale in which after much painful cogitation a learned rabbi sighs, explaining that he cannot forgo even one of the two *Yikum Purkans*, despite his awareness of their archaic nature. Nonetheless, despite the ultra-conservatism appearing in rabbinic writings with regard to the *nusaḥ* of the liturgy, almost every prayer in our prayer books, perhaps with the exception of pure biblical texts, such as *Shma* etc., have undergone extensive evolutionary changes.

2) And as to the issue of *"le-khatḥila ve-be-diavad*," I have shown (pp. 120-121) how the *Maharil* was constantly altering the *nusaḥ*, and the *Ramban* was erasing words in the (Provençal) liturgy and the *Meiri* argued forcefully against such "editorial" activities (pp. 155-156). Was all this activity *be-di-avad*?

3) Concerning the addition of the foremothers (*Imahot*) alongside the forefathers (*Avot*) in the *Amidah*, I suggested no *alteration* in the actual *berakhah*, only an addition. I did not advocate a change in its structure or in basic content. And, as I believe I demonstrated persuasively, additions of such a nature are not only legion but also halakhically legitimate. Furthermore, in *Birkat ha-Mazon* there should be no objections to such an addition. Surely such can hardly be termed "a *misrepresentation* of Jewish theology" (p. 79)!

4) Of course, I am deeply cognizant of the different status of the first (and last) three blessings of the *Amidah*, as opposed to the middle ones. But Prof. Frimer surely knows that in them too, there have been great changes in the *nusaḥ,* again not altering the structure or basic content.

Hence, his statements (p. 77) that "for more than a millennium, the texts of the opening and closing six benedictions have not been tampered with," and again on p. 78, "… no changes or additions whatsoever have been made in the first three *berakhot* of the *Shemone Esrei*," are hardly accurate. Incidentally, I do not think that the verb "tamper" is appropriate to modifications and changes made by Geonim, Rishonim and Aharonim.

And just to give a smattering of examples on such changes, let us first look at *Birkat Magen* according to the Palestinian version:

> בא"י אלקינו ואלקי אבותינו אלקי אברהם אלקי יצחק ואלקי יעקב. הקל הגדול הגבור והנורא קל עליון קונה שמים וארץ מגיננו מגן אבותינו מבטחינו בכל דור ודור. בא"י מגן אברהם.

Or in another version:

> בא"י ..... מגיננו ומגן אבותינו מבטחינו בכל דור ודור, לא יבושו לעולם קווך. בא"י מגן אברהם.

And in a Babylonian version:

> בא"י.....גומל חסדים טובים וקונה הכל זוכר חסדי אבות ומביא גואל לבני אדם, מלך מושיע ומגן, בא"י מגן אברהם.

Or in yet another version:

> בא"י..... ומביא גואל לבני בניהם למען שמו באהבה, מלך עוזר ומושיע ומגן. בא"י מגן אברהם.

Or again:

> .... מלך רחמן חי עוזר ומושיע ומגן...

And the same can be demonstrated for each of these "special" *berakhot*. And once again, just to further clarify this point, let us look at yet another version of *Birkat Gevurot* according to a Babylonian version:

> אתה גבור לעולם ה' מחיה מתים אתה רב להושיע, משיב הרוח ומוריד הגשם/מוריד הטל, מכלכל חיים בחסד מחיה מתים ברחמים רבים, סומך נופלים ורופא חולים ומתיר אסורים ומקיים אמונתו לישני עפר, ומחזיר נשמות לפגרים מתים, מי כמוך בעל גבורות ומי דומה לך, ממית ומחיה ומצמיח ישועה ואין דומה לך, ונאמן אתה להחיות מתים, מלך מחיה הכל בטל. בא"י מחיה המתים.

And compare this with a Palestinian version:

> אתה גבור משפיל גאים חזק לדין עריצים חי עולמים מקים מתים משיב הרוח ומוריד הגשם/הטל, מכלכל חיים ומחיה מתים. כהרף עין ישועה לנו תצמיח. בא"י מחיה המתים.

And some versions add: חי עולמים מקים מתים, and others: מי כמוך נאזר בגבורה.

And yet others have: ...אתה גבור אין כמוך חזק אין זולתך [1]

And recently I came across an article by R. Yehudah Cohen, entitled *"Tefillat Shmonah Esrei le-Fi Nusaḥ Paras u-Bucharah,"* published in *Kovetz Ḥitzei Giborim* 7, 2014, pp. 257–287. On pp. 261-262, he brings the version of the first blessing, *Magen*, with its variations from different manuscripts (listed ibid, pp. 259–261) as follows:

ברוך אתה ה' אלקינו ואלקי אבותינו אלקי אברהם ואלקי יצחק ואלקי יעקב הקל הגדול הגבור והנורא קל עליון [מלך רם מושל–או: רם ומושל, על הכל] גומל חסדים טובים וקונה הכל, קונה שמים וארץ וזוכר חסדי אבות [ומרחם על בניהם] ומביא גואל לבני בניהם, לזרעם אחריהם [או: לבני בניהם ולזרעם אחריהם] [תוספת לשבת: והנחיל לבניהם שבתות למנוחה]
[למען שמו באהבה], מלך רחמן, קל חי גואל [עוזר] סומך ומושיע ומגן. בא"ה מגן אברהם.

So too the second blessing has a number of variations, such as:

מכלכל חיים בחסד מחיה מתים ברחמים רבים סומך נופלים רופא חולים, עוזר דלים ומתיר אסורים ומשען לאביונים, ומקיים אמונתו לישיני עפר, מי כמוך אב הרחמים, אדיר נצח בעל גבורות מי דומה לך מלך ממית ומחיה מוריד ומעלה, מלך מחיה הכל ברחמים רבים, ונאמן אתה הוא מלכינו להחיות מתים. בא"ה מחיה המתים.

And in the third blessing:

אתה קדוש ושמך קדוש וזכרך קדוש וכסאך קדוש ומשרתיך קדושים וקדושים בכל יום תמיד יהללוך סלע, בא"ה הקל הקדוש.

The author of this study analyzes the various variations on pp. 275–278. Here we have related only to the first three blessings, since it is to those that Prof. Frimer referred. But the variations continue throughout the *whole* of the Amidah, and perhaps even more remarkably in the last three blessings. See for example, ibid. pp. 169, for the רצה blessing:

רצה ה' אלקינו בעמך ישראל ולתפילתם שעה והשב עבודת ישראל בקרוב לדביר ביתך ואשי עמך ישראל היום היא תפלתם ותחנתם (או: ותפילותינו ועבודותינו היום) מהרה תקבל ברחמך ברצון ותהיה נא לרצון תמיד עבודת

---

[1] See Uri Ehrlich, *The Weekday Amidah in Cairo Genizah Prayerbooks: Roots and Transmission*. Jerusalem 2013, pp. 38–45 [Hebrew]. And anyone who looks even curiously into the various readings listed in *Otzar ha-Tefillot* to the *Amidah* in the section entitled *Tikkun Tefillah*, will find numerous additional variants in both the first and last three benedictions, based on *Siddur Rav Saadiah Gaon*, *Rav Amram Gaon*, Rambam's version, Yemenite *nusaḥ* etc. These variants are too plentiful to record here.

עמך ישראל בימינו ותרצה בנו ותחזינה עינינו לך ונראה עין בעין בשוב שכינתך לנוך לציון ותרצה בנו ובעמידתנו כמאז בקרוב אל מלך צור העולמים רוצה בעבודה כמאז ברחמים אנא קל נא רוצה בעבודתנו ותחפוץ בנו ותרצה כמאז מהרה שכינתו לציון....

Here we have not noted all the variations and possibly put together variant visions, and hence the repetitions. But the emerging picture is patently clear, and becomes even more so in the following blessings, and, of course, also in the intermediate ones. (See the editor's discussion on pp. 183-184.) And I have not here related to the versions in the Rambam, or *Maḥzor Romah* etc.

And getting back to the first blessing, we should take account of Naftali Wieder's discussion of the phrase וקונה הכל, with its variants קונה שמים וארץ or קונה ברחמיו שמים וארץ, in his *Hitgabshut Nusaḥ ha-Tefillah ba-Mizraḥ u-ba-Ma'arav*, Jerusalem 1998, vol.1, pp. 65–94.

R. Yehudah Cohen summarizes his findings on p. 186, as follows:

> From the time of the Geonim till the middle of the period of the *Aḥaronim* in Persia and Buchara, this was an especially lengthy version of the [Amidah] prayer, a version which is the longest of those versions which have come down to us (and it has some two-hundred words which have no parallels in the other [known] versions).

We have related only to the first three blessings, as mentioned above. But this again demonstrates clearly how fluid the text was within the given framework.

So even in these *special berakhot* we see a considerable variety in the various *nusḥaot*, with a process of constantly including additional elements, without compromising the basic structure or the primary message. The same can be shown for the other *berakhot* in this category. And this is precisely what I have tentatively suggested to be halakhically legitimate in the adding of the *Imahot*.

So while I wish to wholeheartedly thank Prof. Frimer for his careful reading, and both for his accolades and for his critical comments, I feel that these criticisms have been competently answered.

2.

I now wish to move on from the more specific area of liturgical change to a more general area of changes of custom in other halachic areas. For in the past I have written extensively seeking to demonstrate that what nowadays appears to be mandatory practice (*din*) is actually custom

(*minhag*)[2] resulting out of a number of different causes, such as a cautionary phrase in Talmudic literature, a questionable statement in the Rambam,[3] as well as a particular formulation in our liturgy, etc. These practices of a negative nature—*not* to permit women to have *aliyot* to the Torah, *disallowing* women to have positions of halachic authority, not having *birkat Cohanim* every day[4] and so forth—are, in many cases having serious deleterious effects, alienating significant sectors of the community from orthodox Judaism, or detracting from the spiritual experience in the synagogue. Consequently, I suggested that certain changes should be initiated, changes that would benefit the community and can be legitimated in terms of mainstream normative *halachah*.

The standard critical response to such an argument is that any such changes would constitute breach of tradition, and not just tradition but "time-hallowed" tradition. Thus any such change would erode the ramparts of our legal system (*ḥomat ha-dat*).

To this particular criticism I should like to counter by quoting extensively (with my own annotations) an illuminating passage in R. Ovadiah Yosef's *Ḥazon Ovadiah*: *Sukkot*, Jerusalem 2005, pp. 384-385. And although it deals primarily with a question of liturgical change, its implications are of a much broader nature.

He begins by relating that R. Ḥayyim Palache, in his response *Lev Ḥayyim*, Salonica-Izmir 1823 (sect. 9, fol. 6b) tells us a story how in 1801 R. Raphael Yitzhak Mayo, author of *Shorshei ha-Yam* (Salonica 1806–1815), on the first day of *Sukkot* came to the synagogue and asked all his congregants if they would agree to a certain change he wished to institute in the order of service. For hitherto the *hakafot* on *Sukkot* had been after *musaf*, and now he wished to have them after *hallel*. See *Ḥazon Ovadiah* ibid. p. 384.

His request, he argued, was in accordance with the custom in Jerusalem, as recorded in R. Mosheh Galanti's *Korban Ḥagigah*, Venice 1706 (sect. 86, fol. 46a).[5] All the congregants agreed, stating that "that which our master requests we will do," that is to say all with the exception of one individual, a rich (*gvir*) and wise gentleman, Mr. Yaakov Davidi, who stood up before the Rabbi and would not allow him to change the

---

2 See my discussion in my study in *Women and Men in Communal Prayer: Halakhic Perspectives*, ed. C. Trachtman, Jersey City, NJ 2010, pp. 39–52.

3 See my essay in *Meorot* 8, 2010, pp. 1–12, entitled "On Women in Rabbinic Leadership Positions."

4 See *Conversations* 20, 2014, pp. 150–155.

5 See on this subject in great detail, A. Yaari, *Toldot Ḥag Simḥat Torah*, Jerusalem 1964, pp. 276–287.

custom. He made the case that "this was the custom of our forefathers of old, who obviously did so with good reason, even if now we do not know that reasoning and justification." When R. Mayo saw that there was a single person who objected, he recanted from his earlier suggestion, and to this day the custom remains to have these *hakafot* after *musaf*. Rabbi Palache continues that several years later he found a source supporting this practice in two versions found in the Zohar. As he wrote in his *Ruaḥ Ḥayyim* (Izmir 1877–1881, sect. 660), and more extensively in his response *Lev Ḥayyim* vol. 2, Salonica-Ismir 1823–1869, *Oraḥ Ḥayyim* sect. 127, fol. 93b; and *Ḥikekei Lev* (Salonica 1840–1849, *Oraḥ Ḥayyim* sect. 6; and, furthermore that this was the custom in Salonica, as we know from a response *Beit David* (by R. Yosef Filosof, Salonica 1700–1707, sect. 459).

This then is what R. Ḥayyim Palache related. And at this point R. Ovadiah [in square brackets] remarks as follows:

> In my opinion that rich individual acted in an unacceptable manner in opposing the Rabbi of the community, R. Rephael Yitzhak Mayo, who was renowned throughout for his greatness in Torah. Furthermore, he had opposed the will of the whole community. Such behavior is inadmissible. For already Maharikash (that is R. Yaakov Castro), in his *Oholei Yaakov* (*Yoreh Deah*, Livorno 1783, sect. 242), wrote that if the *Ḥakham* wishes to institute a change in a certain custom, there is in this no slight upon the earlier authorities (*pegam la-rishonim*), for a space was left for him to exercise his own judgement (*le-hitgader bo, B. Ḥullin* 7a). Furthermore, I have already shown in my *Yabia Omer* (fol. 10, Jerusalem 2004, *Oraḥ Ḥayyim* sect. 21:8 et seq., pp. 32-33) that a number of Torah giants (*Gedolim*) made changes in their communities in the order of the service and also in a number of other customs, instituting practices that were, in their opinion, more correct, and no one raised any objection.

R. Ovadiah continues:

> And so too wrote R. Yosef Ergas [1685–1730], in his *Divrei Yosef*, Livorno 1742, sect. 5 ad fin, that "any custom that does not appear to be right in the eyes of the decisors (*poskim*) should be abolished, and a more fitting custom should be established to replace it. And one should not lean one's support on the broken cane of those who say that one may not change a custom, even if it is not fine and suitable, for such an argument has not substance, and we have not found a single authority who claims that one may not alter the prayer customs, for so wrote the Maharashdam (that is R. Shemuel di

Medinah, Salonica 1594),[6] cautioning that we should do so without triggering a conflict." (The above is a paraphrase of Ergas' statement. D.S.) And also R. Shalom Shulal, in his *Neveh Shalom* (Livorno 1804, sect. 582, fol. 53b), was amazed at those who said one may not change a custom, for who was greater than R. Hai Gaon, who changed the custom of the *haftarah* on *Simḥat Torah* and instituted to read the beginning of the Book of *Joshuah*… [7]

---

6 See response no. 34, to *Oraḥ Ḥayyim*, eds. D. Avidan and S. Deutsch, Jerusalem 2010, pp. 47–49. On the Maharashdam, see now Y.S. Spiegel's excellent introduction and historical survey on this great authority, in the last volume of *Shu"t Maharashdam la-Ḥadashot,* Jerusalem 2015, pp.1–80.

On p. 21 Spiegel writes as follows:

> One should bear in mind that *Maharashdam* functioned shortly after the expulsion from Spain. As a result of that expulsion there were formed complex congregations of locals and "expellees," resulting in arguments as to which customs are mandated for those congregations, those of the locals, or those of the Spanish "expellees." Consequently we find in his response discussions of questions touching up the status of *minhag*—custom—such as which version of the liturgy is obligatory…, and other questions dependent on variations in *minhag*. Note that R. Yosef Even Ezra, *Maharashdam*'s disciple, was the first to write a comprehensive work on the subject of customs, that is *Masa Melekh*, Salonica 1601. And it could appear that he wrote it precisely because it was in that generation that these issues arose.

Concerning changes in the variant of the liturgy, he refers us to that responsum in *Oraḥ Ḥayyim* no. 34 [47a], which he noted above.

On his sensitivity to the needs and troubles of individuals and the community, see Spiegel ibid. pp. 43-44.

On the situation of the "mixed congregations" in the post-expulsion period, see Y.D. Gilat, on *'Lo titgodedu*," in *Bar-Ilan* 18-19, 1981, pp.79–98, and what I wrote in *Minhagei Yisrael*, vol. 3, Jerusalem 1994, pp. 108–112.

A somewhat similar situation may be found in early Kairawan, where Italian immigrants brought liturgical practices that clashed with the local ones. See Menahem Ben-Sasson, The Emergence of the Local Jewish Community in the Muslim World: Qayrawan 800–1057, Jerusalem 1997, p. 174 [Hebrew]. Many additional examples could be cited, but that is beyond the scope of this study.

7 The *Gemara* in *B. Megillah* 31a states that the *haftarah* should be from *1 Kings* 8. But *Tosafot* ad loc. state that there are places where their *haftarah* is from *Joshuah* 1, and they attribute this tradition to R. Hai Gaon, but they do not know why he changed it from the Talmudic *haftarah. Sefer ha-Eshkol*, by R. Yitzhak Av Beit Din of Marbonne, ed. B.H. Auerbach, Halberstadt 1867, part 2, p. 65, brought both customs, adding that the Joshua custom is based on the *Yerushalmi* (a source unknown to us; see editor's note 9), explaining that this is a natural continuation after Moses' death. Similarly the *Rosh* (*Megillah* ad fin.) in the name of the *Yerushalmi.* Likewise, the *Raviah*, R. Eliezer be R. Yoel ha-Levi (1140–1215) *Sukkah*, vol. 2, ed. A. Aptowitzer 2nd edition, Jerusalem 1964, sect. 595, p. 329,

> So too the Rivash, R. Yitzhak ben Sheshet (1326–1407) in his responsum, Constantinople 1547, sect. 37,[8] wrote that he changed the custom in Saragossa to pray the silent prayer and its repetition in the *musaf* of Rosh Hashanah [even though apparently it was difficult for some members of his community, D.S.]. And so too, the author of *Kenesset ha-Gedollah* [R. Ḥayyim Benveniste, Livorno 1648 (*Oraḥ Ḥayyim*) sect. 282)] and his *Shiyurei Kenesset ha-Gedolah* (sect. 284 and 566), etc. And he too found support in the words of R. Ergas ibid. See further, R. Ḥayyim Palache's *Moed le-Khol Ḥai* (Izmir 1861, sect. 25, no. 36). Furthermore, Ergas' *Divrei Yosef* (sect 4 ad fin.) cited R. Yosef ha-Levi, who though he gave great importance to the status of *minhagim*, nonetheless wrote that one may change them, and that there is no reason to fear controversy when the majority of the congregation is agreeable to the change; and in changing customs we do not pay attention to the minority (*lo ḥaishinan le-miuta*), as is clear from the responsum of the Maharashdam.

R. Ovadiah summarizes as follows:

> In view of the above it is clear that Rabbi Mayo could have changed the custom, since the majority of the community were agreeable and were fully in consent, and stated explicitly that "everything that our master says we will do." Consequently, he had no reason to pay attention to the objection of the *gvir*…, but presumably he did so because of his extreme humbleness, deciding to be passive and let things be as they were.

Now, I am well aware that this is by no means a simple issue, and there has been a great deal of literature on the subject. There is obviously an inherent psychological block against change in general, and against alterations in custom in particular. And this is understandably fortified

---

in the name of the *Yerushalmi* (and see editor's note 4), and *Baal Halakhot Gedolot: Aspania*, ed. J. Hildesheimer, Berlin 1888, p. 620. See B.M. Lewin, *Otzar ha-Gaonim* to *Megillah,* vol. 5, Jerusalem 1933, p. 63. See further, *Sefer ha-Roḳeaḥ*, by R. Eleazar of Wermaiza (Worms, c. 1140–1225), ed. S. Schneersohn, Jerusalem 1967, sect. 224, p. 127; *Maḥzor Vitri,* by R. Simḥah of Vitri (12 cent.), ed. S. Halevi Horowitz, Berlin 1888–1895, sect. 418, p. 458 [ed. A. Goldschmidt, vol. 3, Jerusalem 2009, p. 945 (see editor's note 11, with numerous references)]; *Siddur Rashi,* eds. S. Buber and Freimann, Berlin 1911, sect. 308, p. 149, citing R. Yehudai Gaon from *Halakhot Gedolot: Seder Rav Amram Gaon*, ed. A.V. Frumkin, Jerusalem 1912, vol. 2, p. 385. All of the above are cited by R. Ovadiah Yosef, ibid. p. 471, to which may be added the references cited by Goldschmidt ibid. See further, A. Yaari ibid. pp. 21, 55-56.

8 Ed. David Metzger, vol. 1, Jerusalem 1993, pp. 41-42.

and buttressed by a variety of arguments, such as fear of breaching the *ḥomat ha-dat* (the ramparts of our religion), "the slippery slope," the care not to slight our forebearers (referred to above)[9] etc. Hence, inertia and passivity—*shev ve-al ta'aseh*—is seen as a preferable position. The result is that great care is strenuously taken to prevent any kind of change in our "time-hallowed" traditional practices. This position has been extensively discussed in numerous publications, as mentioned above. And just to give the merest sampling, I would call attention to the studies of the contemporary R. Yaakov Ḥayyim Sofer, in his *Sefer Menuḥat Shalom* 7-8, Jerusalem 2002, pass., and his *Maamar Yaakov* (on R. Avraham Palache's *Padeh et Avraham*, Izmir 1899), Jerusalem 2002. Prof. Eliav Schochetman, "*Aliyot Nashim la-Torah*," apud *Kovetz ha-Rambam*, ed. Yosef Eliyahu Movshovitz, Jerusalem 2005, pp. 324–338, etc. See further the numerous discussions of R. Ovadiah Yosef in his volumes of *Yabia Omer*.[10] In point of fact, customs are always changing, as so clearly demonstrated by R. Yaakov Ḥayyim Sofer himself, in *Menuḥat Shalom* sect. 2, pp. 26–31, where he brings a wealth of examples from numerous communities, such as Jerusalem, Safed, Hevron, Constantinople, Izmir, Egypt, Salonica, and so forth; and to this list may be added numerous others.

R. Ovadiah (in *Yabia Omer* vol. 8, *Yoreh De'ah* 28:2, p. 341), basing himself on Ergas ibid. sects. 1 and 5, summarizes his position on this issue as follows:

> To change a custom in order to make a better one is permitted.[11]

---

9 See Eliav Schochetman's excellent article on this subject in *Bar-Ilan* 18/19, 1985, pp. 170–195.

10 See index (vol. 11) p. 330 s.v. *shinui minhag.*

11 Of course, the legitimate right of a rabbinic authority to change or even annul an earlier ruling, and even long-standing ordinances, is mentioned frequently in early rabbinic sources. See, for instance, *B. Shabbat* 46b and *B. Hulin* 66-7 on Josiah's destruction of the brazen serpent dating to the time of Moses, and the justificatory phrase "space was left to us by our forefathers giving us a measure of freedom [*le-hitga[n]der bo*]." And R. Yehudah ha-Nasi annulled a number of earlier ordinances; see, e.g., *Y. Rosh ha-Shanah* 2:1 cf. Mishnah ibid. 4:2; *Y. Demai* 2:1; he even wished to abolish *Tisha be-Av*, but was unsuccessful in this matter, see *B. Megillah* 5b. And see also *Y. Shevi'it* 1:1, for R. Gamliel's annulment of the additional two periods of *Shevi'it.* (This was R. Gamliel son of R. Yehudah ha-Nasi). There are numerous additional examples, which go beyond the scope of this study. See on this subject Y. Schipanski, *Ha-Takkanot be-Yisrael*, vol. 1, Jerusalem New York 1991, introduction, chapter 5, pp. 74–87, and pp. 378–380, 382–390, 413-414; M. Alon, *Ha-Mishpat ha-Ivri: Toldotav, Mekorotav, Ekronotav*, Jerusalem 1973, pp. 419–421, 442–446, 527, 538 et seq., 544 et seq., 546, 552, 554, 562, 567, 594, 596-597, 616–619, 622–624, 634, 649, 651, etc. There is a

So I suppose, when all is said and done, the ultimate question is what constitutes "improvement" in *minhagim*, and what are the criteria for such "improvement"? Does each community decide for itself in consultation with its rabbinical leadership, and follow the consensus, as would appear from the above sources? And if so, what are the parameters, the constrictions and the "fail-safes" to prevent the slide into the treacherous "slippery slope"? Undoubtedly wise counsel is required in all such determinations.[12] ☙

very considerable body of literature on this subject. Here we have merely given points of departure for further study.

See further Rambam, *Hilkhot Mumrim* 2:5, who, when discussing the principle found in *M. Megillah* 2a et alia, that a *beit din* cannot annul the rulings of an earlier *beit din* unless they are greater than them "in wisdom and number," circumscribes this statement as follows:

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

The Rambam's limitation of the Talmudic principle was widely accepted by later authorities, and in practice many earlier *takkanot* and *ḥaramot* were later annulled. See, in detail, R. Ovadiah Yosef, in *Yabia Omer* vol. 7, Jerusalem 1993, *Yoreh De'ah* 14:3, pp. 233-234. (And also cf. ibid. vol. 3, Jerusalem 1986, *Ḥoshen Mishpat* 7:4, p. 346.) If this be the case for *takkanot* and *gezerot*, how much more so for *minhagim*.

Incidentally, the reason I quote R. Ovadiah so often, and less other *Aḥaronim*, is simply because his encyclopedic responses cover almost all the relevant literature, both early and contemporary.

12 See, for example, what I wrote in *JOFA Journal* IV/4, 2007, pp. 7–9, in an article entitled "The Human Element in the Commandments: The Effect of Changing Community Norms or Halachic Decisions." There I discussed how the Talmudic prohibition of a man's walking behind a woman was gradually annulled in view of changing notions of *tzeniut*—modesty. See R. Yehuda Henkin's important book *Understanding Tzniut: Modern Controversies in the Jewish Community,* Jerusalem, New York 2008, especially pp. 73 et seq. But here again, the examples one could bring are legion.