

The Power of Rabbinic Authority and its Implications, By Rabbi Dr. Chaim E. Schertz

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In Jewish tradition, there were two types of rabbis which were given different authorities: those who were ordained; and those who were not. Ordained rabbis were called Smuchin or Mumchin. The institution of ordination was initiated by Moshe Rabbenu when he ordained Yehoshua, and from that time on, each ordained rabbi could ordain others. Later on, during a specific period of the Patriarchate from the Second Century C.E. to the Fifth Century C.E., the Patriarch or Nasi was primarily responsible for the ordinations of rabbis. All ordinations could only occur in the land of Israel, and ordained rabbis could engage in all aspects of Jewish law. An ordained court of three who convened in the land of Israel is what the Torah calls *elohim* A court which was ordained in Israel could extend its authority to anywhere in the world. See Mishneh Torah, Shoftim, Hilchot Sanhedren Chapt. 4, Halachot 1-4 and 12.

Since ordination could not occur outside the land of Israel, what was the underlying authority of a court which was not ordained? The initial authority for courts outside of Israel was the appointment of rabbis and judges by the Head of the Exiles (Reish Galuta) which occurred in Babylonia after the first exile and ended in the Sixth Century C.E. That authority was also valid all over the world, including Israel. Nevertheless, it was far more limited than the authority given to ordained rabbis or courts. One example, is that those appointed by the Reish Galuta did not have the power to levy fines (Knassot). Ibid, 4:14.

In the absence of a Reish Galuta or his ability to appoint rabbinic courts, an interesting analysis is presented in the Talmud.

Abaye encountered Rav Yoseph who was seated and was engaged in ruling on matters dealing with divorce. He (Abaye) said to him, “we are lay people (unordained rabbis) and there is a Braita that ‘Rav Tarphon stated . . . “these are the judgements (Mishpatim) which you are to place before them” (Shemot, 21:1) i.e. before ordained rabbis, but not before laymen.’ He (Rav Yoseph) said to him (Abaye) we serve as their agents (ordained rabbis in the land of Israel) in cases of monetary admissions and loans (admissions applies to cases where witnesses hear that the borrower admitted that he borrowed a sum of money and now denies it. Loans are cases where witnesses actually see the loan taking place.) (Abaye asked) If that is so, should we not also serve (as agents) in cases of theft and personal injury? (Rav Yoseph answered: when do we serve as agents?) In cases that are regular occurrences (Sh’chicha). In cases that are not regular occurrences, we do not serve as their agents. Gittin 88b

Rashi comments, that it is valid for an unordained court to decide cases of divorces because divorces are also frequent and usual occurrences. The Tosafot add to this list, the conversion of converts. This, despite the fact that the Torah maintains that converting converts is a judicial

matter which requires an ordained court, for it is called a “Mishpat,” judgment. Nevertheless, conversions are included in the category of regular occurrences. Ibid, Tosafot, B’milta. Although it does seem unusual that conversion was considered a regular occurrence.

The Tosafot also raise the intriguing question of how it is possible to use the principle of agency today when there are no longer ordained rabbis in the land of Israel. (Who gives us permission now?) Ibid.

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The answer given by the Tosafot is that today we rely upon the agency (Sh’lichut) given by the ordained rabbis who lived in Israel in the past and are no longer living. See Ibid. Thus the power of agency transcends time as well as space. It is valid for all time and for any country in which Jews may live.

There is, however, a logical difficulty with the principle of agency or Shlichut. In the normal usage of agency, when one appoints an agent, he transfers over to the agent all the power that he himself has. In this case, however, the ordained Rabbis only gave over a very limited form of agency based upon the principle of what is usual. How did the Rabbis come to that conclusion and what established the basis for allowing such distinctions to exist?

The Ran offers an analysis which allows us to understand the process which established the distinctions in the principle of rabbinic agency. He states:

And even at a time when there are no longer ordained rabbis in the land of Israel, probably they (the unordained rabbis in the exile) are carrying out the agency of the earlier rabbis. Does it not say (in matters dealing with conversion) that the rabbis can declare that when a non-Jewish woman went into the Mikvah, it was because she was a Niddah and she thus demonstrated that she was an acceptable convert . . . Yevamot 45b). What gives the Rabbis the right to declare this? Probably, they were carrying out an agency of ordained rabbis. Ran on Rif (Gittin) 49b Anan.

It should be noted that the true basis for allowing conversions without an ordained court is because of the principle found many times in Talmudic literature that should not close the door of conversion before those who want to convert. See Yevamot, 47a Tosafot.

In cases of admissions and loans, the Ran continues in a similar vein:

We carry out their (ordained rabbis) agency, because of the principle of not closing the door before those who need to borrow money. (A discussion of this matter is found in Sanhedrin 3a. Indeed, ordained courts would hamper the principle of lending money. See Rashi Ibid). Divorces are also comparable to admissions and loans because if they could not be granted, they (undivorced women) would not be able to remarry, and the daughters of Israel would become Agunot. Ibid.

We see that the Ran uses the concept of agency as a hook upon which to hang significant issues in Jewish life. Sh’chicha is not just the frequency or normalcy of the issue, but the impact which it can have upon the Jewish community. Without any judicial system, people would never lend

money, which would disrupt the economy. If there would be no supervision over conversion, that may ultimately alter the nature of Jewish identity. Finally, if there would be no possibility of divorce, that would lead not only to unnecessary agony for Jewish women, but could well lead to an increase of Mamzerut.

One has to argue that the ordained courts who existed in the land of Israel understood what issues would be necessary to be placed under rabbinic administration. Thus, they established agency, not on a universal basis, but specifically for issues that would be crucial for the continuity of Jewish life in the midst of a non-Jewish world. With regard to the question of how could the ordained rabbis only give limited power to their agents, the answer is that they actually gave full power, but only in limited areas which were necessary for Jewish survival. We could truly say that the ultimate authority for non-ordained courts outside the land of Israel is the amended need of the Jewish people in the Galut.