

I am grateful to Rabbi Waxman for his extensive comments especially on my Talmudic interpretations.

Let me note first that R. Waxman does not offer any objections to my interpretation of the permanent safek in Rashi's position. (As far as I know, the only two interpretations of Rashi's position on the table are Hawthorne's and mine.) His objection is that in my overall analysis I ignore an important perspective found in Ramban. That greatly interests me. I can't say, however, that at present I fully understand what that other perspective is or how it relates to the issue of bererah.

Let me say first of all that I assumed that Ramban's distinction between (as R. Waxman puts it) "action" (*ma'aseh*) and "accomplishment" (*chalut*) was accepted by everyone, including Rashi, Tosafot, Meiri, Ran, etc. (See my added last note 38 in which I refer to R. Aharon's interpretation of the critic's of Rashi as holding that a "safek ma'aseh" does not qualify as a "ma'aseh".) It seems that R. Waxman's Ramban is saying that in cases of bererah there is no ma'aseh because of some failing in the "what" of the matter, not just the "whether". I don't see yet any difference between that and what I took Meiri and everyone else to be saying.

But I think R. Waxman's main point is that my analysis ignores a "physicalist" model of Halakhic transactions. I don't question that the distinction between this model and the "idealist" model is highly significant, but I do not yet understand the application of it that R. Waxman attempts to make to the issue of bererah. He suggests that on the physicalist model the example of the sale of a house that I discuss might be compared to a case where "Reuven tells Shimon . . . [that] he is placing in the courtyard of Reuven now at time 't' the object 'x' that his wife will pick out next week. I think it should be obvious to us that . . . [this is] clearly problematic. The point is that [this example and my example of the sale of a house] are really the same. The halakhic actions and results involved in halakhic transactions and status changes should be viewed as akin to or 'kinds' of real world physical occurrences. As such, they cannot be clarified retroactively."

I don't quite follow this. Let's suppose that the Halakhic sale of a house involves a literal physical change of a distinctive kind in the house's subatomic structure. How is that relevant? The critical point is that the change, whatever its metaphysical nature, is produced by the intentions (*da'at*) of the agents of the transaction. The question then is whether an intention framed in terms of a future contingency is good enough. Why shouldn't it be? Is it because this might constitute some kind of impossible backwards causation? But that cannot be the explanation, for if it were, then certainly *tenai* would be threatened at least as much as *bererah*. Whatever our model is we can't lose sight of the fact that *tenai* is valid. So when R. Waxman states that on the physicalist model "halakhic actions and results involved in transactions cannot be clarified retroactively", I don't think that can be because of concerns about backwards causation. Now, Hawthorne (who must have been a Talmudist in some past incarnation) suggested as part of his interpretation of Rashi that, whereas it need not be a hard fact at the time of a transaction whether the transaction is valid, it must be a hard fact at that time what the elements of the

transaction are. I think that's a logically coherent view, though not one that seems immediately plausible on purely intuitive grounds. Might that be what R. Waxman has in mind when he says that halakhic actions cannot be clarified retroactively? But I don't see how anything of that sort follows from the physicalist model. How would it follow from that model (any more than from the other model) that, whereas it can be a soft fact whether there was a valid chalut, there cannot be a soft fact whether there was a valid ma'aseh? And of course R. Waxman does not say anything of this sort about soft facts.

R. Waxman faults me for assuming a "minimal criteria of reference" theory. It's not clear, however, what R. Waxman thinks might be required beyond the agents referring to the elements of the transaction. Must they be able, at the time of the transaction, to physically point to the elements and say, e.g., "This house here is the one I'm purchasing? Although I allow in my note 8 that there are likely some kinds of constraints in some transactions as to what qualifies as having successfully specified the elements of a transaction. I think that in general the minimal criteria of reference theory must be correct. Consider the following example. There are two houses for sale, A and B, and the buyer specifies the one he wants as "the house with the deeper pool." The buyer happens to be a professional diver and he cares about differences of pool depth that we ordinarily could not observe. Let's even imagine that the delicate measuring instruments required to satisfy the buyer's demands have to be delivered from afar so that we won't know for a week which pool is deeper. If we find out after the week has passed that house A has the deeper pool, do we now know that there was a valid transaction last week in which A was purchased? If not, all is lost! Everything said in the literature about the issue of bererah, in the ancient, medieval, and modern sources (and even in the rumors about the topic that I heard as a young boy), indicate that the issue of bererah revolves around the nature of time, destiny, perhaps free will. But if even in such an example as the deep-pool case the transaction is invalid, then in the standard examples of bererah the transaction is invalid for reasons having nothing to do with the nature of time. That cannot be, I think. (There must be discussions somewhere of examples similar to the deep-pool case. Does anyone know of such discussions? Perhaps in the vicinity of the Rosh that I mention in note 8?)

So it seems to me that R. Waxman needs to clarify three questions: First, why does the physicalist model (more than the other model) imply that in cases of bererah the transaction is invalid? Second, if the physicalist model does somehow imply that in cases of bereah the transaction is invalid, how does this model allow that in cases of tenai the transaction is valid? Third, if the minimal criteria of reference theory is wrong, what is required beyond reference, and how does that additional requirement relate to such examples as the deep-pool case?