

## DOES THE TORAH BAN CREATIVITY?

One of the great if bitter “in jokes” of Jewish modernity was Chatam Sofer’s use of the phrase **שחדש מקום** **אסור מן התורה בכל מקום**, for this purpose translatable as “the new is Biblically forbidden everywhere”, to combat Reform innovation.

The first level of the joke was that Chatam Sofer was rhetorically repurposing – i.e., developing a *new* meaning for – Mishnah Orlah 3:9, where the same phrase should be translated “Grain of the new year is forbidden (until chol hamoed Pesach) even outside Israel”.

The second level of the joke is that while the consensus medieval position was that the Halakhah follows this Mishnah, the practice of even the fully observant community has generally been otherwise, such that many great decisors have been compelled to produce *limmudei zekhut* (post facto justifications) for disregarding this law.

So *chadash* is a classic example of a law where popular practice has overwhelmed the written tradition, and Chatam Sofer was offering a creative interpretation – a “chiddush” – and this became the slogan for a static, book-driven vision of Judaism.

And of course this was not Chatam Sofer’s only *chiddush* – the third level of the joke is that Chatam Sofer was a remarkably creative Torah scholar.

The fourth and final level of the joke –if I am not making an unfair presumption - is that most of those opposing Chatam Sofer did not understand that it was funny, and did not realize that he was being creative – they were wholly unaware of the Mishnah and of the history of that Halakhah. This is still true today.

When it stops being funny, of course, is when those who *support* Chatam Sofer stop recognizing the humor, and genuinely believe it to be an absolute statement, *even if they know the Mishnah and the history*. This is an unavoidable risk of absolutist rhetoric. I presume Chatam Sofer was aware of the risk that his own words could eventually be used to stifle the people most like him – brilliantly creative, deeply aware of context, fully committed to Halakhah, and capable of utilizing that creativity so that Halakhah could function effectively in every new context – but thought it a risk worth running.

The contemporary figure most comparable to Chatam Sofer in this respect was the Rav zt”l, who developed a variety of remarkably original conceptions of the extent and nature of tradition. But the Rav did not expect or want his creative rhetoric to become a tool for enforcing a stultified rabbinic conformity, or for creating an intellectual prison bounded by his own theological and halakhic positions, with his students forced to become wardens, inmates, or both.