

Journal of
Halacha
and
Contemporary
Society

Number X

Published by
Rabbi Jacob Joseph School

Journal of Halacha and Contemporary Society

Number X
Fall 1985 / Succot 5746

Published by
Rabbi Jacob Joseph School

Edited by
Rabbi Alfred S. Cohen

EDITORIAL COMMITTEE

Rabbi Yaakov Feitman
Rabbi Dr. Aaron Levine
Rabbi Israel Poleyeff
Rabbi Joseph Stern
Rabbi Bernard Weinberger

The Journal of Halacha and Contemporary Society is published twice a year by the Rabbi Jacob Joseph School, Dr. Marvin Schick, President. The Rabbi Jacob Joseph School, located at 3495 Richmond Road, Staten Island, New York, 10306, welcomes comments on this issue and suggestions for future issues.

It is the purpose of this Journal to study the major questions facing us as Jews in the twentieth century, through the prism of Torah values. We will explore the relevant Biblical and Talmudic passages and survey the halachic literature including the most recent Responsa. The Journal of Halacha and Contemporary Society does not in any way seek to present itself as the halachic authority on any question, but hopes rather to inform the Jewish public of the positions taken by Rabbinic leaders over the generations.

Manuscripts which are submitted for consideration must be typed, double-spaced on one side of the page, and sent in duplicate to the Editor, Rabbi Alfred Cohen, 1265 East 108th Street, Brooklyn, New York, 11236. Each article will be reviewed by competent halachic authority. In view of the particular nature of the Journal, we are especially interested in articles which concern halachic practices of American Jewish Life.

For subscription information contact Mrs. Rhoda Scheiner, Room 820, 299 Broadway, New York 10007, (212) 233-8333.

© Copyright 1985
Rabbi Jacob Joseph School
Staten Island, N.Y. 10306

TABLE OF CONTENTS

<i>Refuah</i> on the Shabbat	
Rabbi Alfred S. Cohen	5
The Contemporary Synagogue	
Rabbi Joseph Stern	30
Kol Isha	
Rabbi Ben Cherney	57
Carrying Pills on Shabbat	
Rabbi Yirmiyohu Kaganoff	76
Intravenous Feeding on Yom Kippur	
Rabbi J. David Bleich	85
Cumulative Index	99

In the Gemara, we find a prohibition instituted by our Sages concerning healing, "*refuah*", on Shabbat:¹

If a person has an attack of congestion, he may be made to stand in water to cool off [but he may not take medication]. Ulla said, "It is a *gezera* (preventive measure) on account of crushing herbs."

במידי דרפואה גזרו רבנן דאי שרית שום רפואה אתי למישרי שחיקת סממנים והוא איסורא דאורייתא דהוי טוחן.

Since the concern for physical soundness is very great, a person trying to assure that he would get better from his illness might "grind herbs," which is biblically forbidden as *tochen*, grinding, one of the 39 activities proscribed on Shabbat.

2. See also Rashi לו ברכות קח; שבת קח; ע"ז כח. ר"ה לא יגמע;

תוספות שבת סד: ר"ה ובלבד; רמבן ספר תורת האדם; מאירי שבת קל"ד

*Rabbi, Young Israel of Canarsie; Rebbe, Yeshiva University
High School, Boys*

In codifying the law, Rambam follows the talmudic teaching and rules:³

לפיכך אסור לבריא להתרפאות בשבת גזרה שמא ישחק
הסממנין.

Therefore, it is forbidden for a healthy person to be healed on the Shabbat; [it is] a rabbinic stringency, lest he grind herbs.

Our purpose in this paper is to study the *issur* of *refuah* and explore its specific parameters and applications today; this is not an easy task in light of the complex nature of medical treatments and the art of healing in the modern world. A number of areas will be discussed:

- (1) To whom did the rabbis intend this prohibition to apply?
- (2) What action did *Chazal* have in mind when they said "it is forbidden to be healed on Shabbat?"
- (3) Does the *issur* still apply today, since virtually no patient grinds or mixes herbs on the spot to minister to his ills?
- (4) How does the *issur* operate in specific situations?

To Whom It Applies

In order to have a better understanding of the halacha, it is essential for us to understand what persons the Sages were speaking about when they taught that one should not do anything to promote healing on Shabbat nor take medication. Jewish law recognizes several distinct categories of persons requiring assistance, and not all of them are included in the proscription:

(A) ⁴חולה שיש בו סכנה – A person whose life is in danger. For such a person, we are bidden to transgress all Shabbat laws, and

3. *Hilchot Shabbat* 21:20

4. When the halacha teaches that one may violate the Shabbat in order to save a life, does that mean that one may do any action which will help save his life, or does it mean that anything which will be helpful to a deathly sick person may also be done – for example, may one heat water to bathe this very sick person, even though the bath will certainly not save his life?

יחזה דעת ח"ד ל, ציץ אליעזר חלק ח', ט"ט.

virtually all Torah laws, in order to save his life. Obviously, he may take medication or do anything else needed to heal or save him.

(B) ⁵חולה – A person is considered “sick” when he feels so bad that he has to get into bed or when his entire body is in pain. A person this ill is *not* among those who may not be healed on the Sabbath. The Ramo⁶ specifically notes, *וכן אם נופל למשכב שרי*, “If he is bed-ridden, then it [healing or medicine] is permitted.”

The opinion of most rabbinic decisors is that children up to the age of nine⁷ are considered as “sick”, and there is no reason not to give them medication. It has also been reported (but not recorded in print) that Rav Moshe Feinstein considers a person who cannot function properly on Shabbat due to his physical condition – even if it is not sufficiently severe to force him into bed – to be equivalent to a *נופל למשכב*, bedridden individual. A person who cannot *daven* due to his condition, or someone hampered by a condition such as arthritis or Parkinson’s Disease, for example, would be included, according to this report, among those who may take medication. We will consider later the status of a person who is sick but, thanks to the medicine he takes, is able to walk around like a healthy person.

(C) A person in extreme pain is not prevented from seeking treatment. Although it is difficult to find quantitative evaluations of how much pain is extreme pain, we do find that rabbinic theory considers the individual’s own perceptions of his well-being as a most relevant factor for the application of the halacha. In the words of Rav Brown,⁸ *כל שיש לו צער גדול לא גזרו רבנן*, “The rabbis did not restrict a person who has great pain [from taking steps to treat the pain].”

5. In *דף רצה*, Rav Brown rules that pregnant, nursing, or menstruant women are classified as “sick” and permitted to take medication. See *אוי”ח שכ”ח ל”ד* for the rules governing a nursing woman’s expressing milk with a pump on Shabbat.

6. שכ”ח: ל”ז

7. משנה ברורה שם

8. *שערים מצוינים בהלכה דף קס”ט:ג*

His conclusion is based upon a distinction made by the Talmud itself:⁹

ציפורן שפרשה ... אם פרשו רובן, ביד מותר ... ומצערות
אותו להוסיף ביד מותר בכלי פטור אבל אסור.

If a fingernail became separated... if most of it is off,
it is permitted [to tear the rest off] with his hand...
and if they cause him pain, he can remove them by
hand. To use an instrument is forbidden, but no
sacrifice would be required [in the days when the
Temple stood.]

Furthermore, this conclusion is accepted also by *Shulchan Aruch*.¹⁰

In *Tzitz Eliezer*,¹¹ Rav Waldenberg, citing *Mor Uketziyah*, permits the preparation of medication for someone who is in great pain, provided it is done with some sort of modification (*shinui*). The *Mishnah Brurah*¹² similarly requires a *shinui*. Pain is considered by many *poskim* as an extenuating factor to limit the scope of the *issur* of medicine on Shabbat; in this regard, Rav Brown¹³ relies on *Minchat Elazar* to permit taking aspirin for a very bad headache. However, Rav Weiss¹⁴ dissents, arguing that since aspirin also has curative powers and is an anti-inflammatory drug, it should be prohibited, even if the person is taking it only for its ability to mask painful sensations. Even so, Rav Weiss concludes להקל נראה גדול, "If he has extreme pain, it is possible to be lenient."¹⁵

9. *Shabbat* 94b

10. שכ"ח לא

11. שם.

12. שם, אות ד

13. שערים מצוינים בהלכה, שם

14. מנחת יצחק חלק ג'לה: ב

15. What a person may do if he suffers great pain from a toothache is discussed in
שערים מצוינים בהלכה קונטרס אחרון צא"ג, ש"ע שכ"ח ג; ציץ אליעזר חלק ח' דף קיא;
In שכ"ח מ"ז there is discussion of what a person should do if he breaks a
bone on Shabbat.

Who then is included in the rabbinic prohibition against healing on Shabbat? It is those in the last category which halacha distinguishes:

(D) מיחוש — A person who “feels ill,” who perceives a vague sense of malaise. The *Shulchan Aruch*¹⁶ describes him as

ודוקא מי שיש לו מיחוש בעלמא והוא מתחזק והולך כבריא

Only one who has an unspecific ill feeling but he gets hold of himself and walks around like a healthy person...

Thus we see that the prohibition is directed at the person who is basically healthy but suffers some minor discomfort — a headache, a backache, perhaps some hay fever or minor arthritic stiffness. Similarly, people who are healthy but want to do something to enhance their physical well-being or to build up their resistance to disease fall within the rubric of the *gezera*. The specifics will be discussed hereinafter.

What Did Chazal Prohibit

A careful study of halachic sources leads to the conclusion that the *issur* of taking steps to heal a person was not intended as an all-inclusive ruling. An action which has therapeutic value, but is either not recognizable as such or may also be done by non-sick persons, would be permitted. For example, drinking tea or whiskey may be soothing to a person with a cold or fever, and he may even want to drink the tea only for that reason — but since other people do drink tea not for medicinal purposes he is permitted to do so on Shabbat.¹⁷

In the past, some conditions were not treated with herbs, potions, or medicines; therefore, these alternate forms of healing were not subsumed in the *gezera* “*shemo yisshot sammemanim*.” One instance might be a stomach ache — it was treated by application of heat. Consequently, today it would not be forbidden

16. שם ל"ז. ראה ג"כ רדב"ז ח"ג תר"מ; משנה ברורה שכ"ח ס"ק כ"א; מג"א שכ"ח יז.
17. שלחן ערוך שכ"ח.

to use a hot water bottle for a person with stomach cramps.¹⁸

But this should not be understood to indicate that just because an action of *refuah* carries with it no similarity or danger of "grinding herbs," it follows that it is permitted on Shabbat. A person may indeed drink tea on Shabbat to soothe his throat and apply a hot water bottle to a painful limb, but he cannot rub oil into a sore muscle.¹⁹ What is the difference? Were someone to observe his activities, it would be readily apparent that rubbing oil into the sore muscle is done for therapy, while no one watching him drink tea would be able to deduce that he is doing it for therapeutic purposes. Thus we find that the *gezera* of healing extends not only to the patient himself but also involves another person who, observing him, might conclude that it is permissible to do things in order to feel better. Since this is precisely the fear involved in the promulgation of the *issur* in the first place — the fear that in pursuit of healing a person might transgress the Sabbath — any act which is perceived by the onlooker as being for healing, is forbidden (but only to the extent that this *gezera* applies, as we have noted).²⁰

18. אורח חיים שכ"ח: מ"ג, משנה ברורה ק"ל

19. שלחן ערוך שע"ב: כז

20. On the other hand, as noted above Ramo permits a person who is bedridden to take medicine. Why? *Mishnah Brurah*, in his gloss there expresses the opinion that Ramo's words imply only that the bedridden patient may eat those foods which only sick people eat — the rationale being that although the onlooker will observe him eating such therapeutically-intended foods, he will *not* thereby draw the general conclusion that it is permitted to be healed on Shabbat; rather, the observer will reason that it is only because the person is so sick that he is permitted to ingest medicinal foods.

The author of *Shmirat Shabbat Kehilchatah*, 20:2, wants to extend the lenient ruling of Ramo to the taking of pills, or to gargling, provided that no biblical *issur* is involved in the preparation of the medicine. He opines that since Ramo agreed that the person's having to be in bed lifts some of the rabbinic restrictions from him, then taking pills which were prepared before Shabbat ought also to be included within those restrictions eased.

The *Shulchan Aruch* also appears to limit the parameters of the rabbinic regulation against healing. After discussing various opinions on the matter, he rules (328:17):

Does The Gezera Still Apply?

In deciding to prohibit *refuah* on Shabbat, the Sages clearly indicated the rationale for their ruling — “lest he pulverize herbs,” which is a biblically-forbidden act on Shabbat. We might very well question if, in the light of changed circumstances, the *issur* still applies to the realities of modern society. Since virtually all medicines are prepared beforehand and no one grinds his own herbs to make pills for himself, we might logically conclude that the entire issue has become moot.

There is precedent for this line of thinking: the Gemara²¹ states that certain forms of dancing and clapping should not be done on Shabbat, since they are customarily accompanied by a musical instrument. They were afraid “*shemo yetaken klei shir*”²² “lest he fix the musical instrument,” an act which is not allowed

מותר לעשות כל השבות ורק ע"י שינוי אם הוא חולי כל הגוף ואין בו סכנת אבר

It is permitted to do any *Shvut* (minor rabbinic restriction) but only with some change [in the manner of doing it] if the person is sick in his entire body and there is no danger to a limb.

In other words, if the medicine is taken in an unusual manner (with a change, a *shinui*) so that the person taking it realizes — “I’m only allowed to take it this unusual way, to remind me that taking it in the ordinary manner is forbidden” — then the *gezera* does not apply. There are many other instances of Shabbat law where precautionary rabbinic prohibitions are waived if they are done with some modification, which is considered sufficient reminder.

What kind of *shinui* would be sufficient to suspend the *gezera* of taking medicine? There are rabbinic opinions that administering the medication by a non-Jew is of itself enough to remind the Jewish patient that taking medicine is forbidden and is only permitted to him in this case with a *shinui*. Others argue that if the pills are made up before the Shabbat, that too is a *shinui* (since clearly the Gemara was talking about situations in which the sick person would grind the herbs he needed, on the spot, then having them prepared before Shabbat would be a change). However, that argument is rebutted by those who point out that nowadays all medication is prepared beforehand. As far as the person taking a pill on Shabbat is concerned, he is not doing anything in any way different when he takes his pill, from the way he would do it on Friday or Sunday. So where is the *shinui*, the modification? How will it be impressed upon his awareness that actually medicine is prohibited unless taken with a modification, when in his case absolutely no modification at all is taking place?

21. ביצה ל

22. רש"י, שם

on the Sabbath. However, in commenting on this passage, the Tosafot note that the *issur* of dancing and clapping no longer applies since we no longer fix our own instruments.²³

In view of the rabbinic willingness to acknowledge that a *gezera* need not continue when the circumstances which prompted its enactment no longer obtain, the *Ketzot HaShulchan* questions whether we may similarly assume that the rule regarding healing on Shabbat had been voided.²⁴ *Ketzot HaShulchan* concludes that since there are still places in the world where people do personally make their own medicine for immediate consumption, the *gezera* does remain operative. Nevertheless, he considers the prevalence of prepared medications as constituting a mitigating factor which should be taken into consideration when other circumstances warrant it; it may affect the final ruling.²⁵

Despite the cogent rationale for a lenient reading of the law, the accepted halacha is that the rabbinic regulation restricting medicine and healing is still in effect today.

Yom Tov

There are numerous instances where the laws of Yom Tov vary from Shabbat law, and we have to determine whether the *gezera* of healing was intended also for Yom Tov.

As we have seen, the impetus for the rabbinic regulation contra healing derives from the biblical *issur* of grinding on Shabbat. However, on Yom Tov the *issur* of grinding is suspended, to allow for the preparation of food. Logically, therefore, the *issur* of taking medication should also be suspended on Yom Tov. Indeed, this is the position taken by Ritva²⁶.

However, it is not so simple. "*Tochen*", grinding, is suspended on Yom Tov in order to enable food to be prepared. We might therefore think that *tochen* is permitted on Yom Tov for

23. This is not a lone opinion; See אברהם שלי"ח: א'.

24. קצות השולחן דף יב.

25. ראה אסיא חלק א, דף 12; שמירת שבת כהלכתה כא"ג; ציץ אליעזר חלק ח' ס' טו"ד; שיעורים מצוינים בהלכה, קונטרס אחרון, דף רצ"ד; חלקת יעקב חלק ג' כ"ג אות ב'.

26. ביצה כב.

other purposes as well. But the derivative permission to grind non-foods is not automatic. It only proceeds in a situation which is "equal for all" (*shaveh lechol nefesh*). Not all *poskim* are prepared to accept the contention that the permissibility of grinding non-foods follows logically from the permissibility of grinding foods; thus, they do not consider the *gezera* of *refuah* suspended on Yom Tov.

Mishnah Brurah rules, רפואה ביום טוב ראשון אסור, "Healing is forbidden on the first day of Yom Tov."²⁷ He bases his conclusion on a text in *Shulchan Aruch*²⁸ which discusses the differences in halacha between the first day of Yom Tov and the second. *Shulchan Aruch* permits application of medicine to a painful eye on the second day, but not on the first. Obviously, *Mishnah Brurah* reasons, the variation arises from the prohibition to take medicine on Yom Tov, and it is only on the second day, which in some regard has a lesser status, that we can be lenient about taking medicine.

Why the prohibition does apply on Yom Tov is not clear and is the subject of considerable rabbinic debate. *Shmirat Shabbat Kehilchatah*²⁹ disputes Ritva, suggesting that taking medicine is not something which is the same for all (*shaveh lechol nefesh*)³⁰ and for this reason is not permitted on Yom Tov. His premise is arguable, for logically one would assume that all people take medicine to make them better; all people want to get better and stay healthy — this is *shaveh lechol nefesh*.

Rav Waldenberg, also disputing Ritva,³¹ arrives at the following guidelines concerning medicine on Yom Tov:

1. On *Chol Hamoed*, all medication and healing is permitted.
2. Many illustrious rabbinic authorities forbid healing on Yom Tov.
3. If there is a significant gain on Yom Tov in the patient's

27. תשובה ג"כ מ.ב. תר"ד:ב; עיין גם בחלקת יעקב חלק ד' מ"א; שער הציון תקיא אות ט.

28. או"ח תצ"ו ב'.

29. פרק ב, טז:מג.

30. עיין פני יהושע שבת לט: על תוספות ד"ה מתירין.

31. ציץ אליעזר חלק ח' טר"ט.

well-being due to taking medicine, many rabbis permit it.

4. If he cannot enjoy Yom Tov unless he takes the medicine, he is permitted to do so.

5. If he started taking the medicine before Yom Tov and he needs to take it for a few days, one can be lenient. In general, if one is lenient on this point, there are many *poskim* on whom to rely.³²

Mental Anguish

Although the science of psychology is relatively new in Western society, Jewish law has always been cognizant of the enormous impact which the emotions have upon the quality of life; the patient's state of mind is always considered a major factor in arriving at a halachic conclusion.

Already in the Talmud³³ we find that when a woman is in labor on Shabbat, one may kindle a light for her, to make her feel better. This ruling is to be followed even if the woman is *blind*! Although she can derive no physical benefit from the illumination, the Talmud teaches us that "משום יתוב דעתא" since it will "settle her mind" and put her at ease, it should be done.

There is a lively discussion in rabbinic literature over the centuries as to the broader implications of the talmudic teaching. Just how far are we permitted to stretch the halacha in order to put a sick person's mind "at ease?" What is the value — therapeutically — of the patient's being at ease; alternatively, what is the effect of a sick person's being anxious about his condition or about the likelihood of his getting better?

Radvaz³⁴ would permit violation of the Sabbath in order to make medication for a sick person — even if the doctor says the patient does not need it, but the patient insists he does.³⁵ His

32. However, an article in *Assia* I, p. 35, cites many *Rishonim* who forbid taking medicine on Yom Tov. The author opines that had Rav Waldenberg been aware of all these early opinions forbidding the practice, he might not have relied on the lenient opinions of the later Rabbis.

33. *Shabbat* 128b

34. חלק ד"סו

35. ביאור הלכה ד"ה ורפא, שכ"ח"ו. A somewhat different twist to the problem occurs

opinion is not necessarily the accepted one. Rav Waldenberg³⁶ distinguishes between mental anguish related directly to the physical condition of the person as opposed to some anxiety which he experiences, but which has no direct bearing upon his malady — for example, he is in great distress because he was supposed to deliver a package but now that he is confined to his bed, he is unable to do it. In a case where the patient is upset about something connected to his condition, Rav Waldenberg permits desecration of the Sabbath (even biblically-enjoined laws) if that is needed to put his mind at ease. However, in the situation where the patient's distress is not directly related to his malady, Rav Waldenberg permits transgression of rabbinic ordinances only.³⁷

when the patient is convinced that he needs a certain medication, but in truth the medicine has no value; many desperate people are convinced that laetrile will cure them of cancer, although no one has ever demonstrated that laetrile can do this. But in the patients's mind, it is very important. What is the halacha in such a case? This situation is discussed in:

רמ"א י"ד קנ"ה; מור וקציעה א"י ח שכ"ח "דהא דכופין היינו כשרוצה למנוע מרפואה ודאית"; רדב"ז ח"ד - טו; רמב"ם פירוש המשניות פרק ח' יומא; צ"ץ אליעזר חלק ח כ"ה ט"ח.

In other responsa we find the question of writing to a Rebbe on the Shabbat to ask him for a blessing — if the patient feels that it can save him, can one do this? See:

שו"ת ר' שלמה קלוגער — ובחרת בחיים סי' פ"ז; משנה ברורה שכח אות ה; הגהות מיימוני הלכות שבת פרק בא הלכה כח אות ד; שערים מצוינים בהלכה, קונטרס אחרון סי' צב"ה.

Other rabbinic authorities were asked about carrying a "Kameyah" (charm) which was written by a person not versed in the Kabbalah — but the sick person believes that the Kameyah preserves his health. א"י ח לג: ש"א כ"ה.

36. צ"ץ אליעזר חלק ח' כ"ה ט"ח.

37. Note the comments of *Mishnah Brurah* ש"ל: whether this rule would be in effect even if the patient does not express his wish, but we know or assume his feeling.

A question was asked of Rav Breisch about the permissibility of a person who is sick, although not dangerously so, listening to the radio on Shabbat [having a non-Jew or an electronic timer turn it on and off]. Reluctantly, Rav Breisch allowed it, although he did comment that משנה חסידות אין זו משנה חסידות, it is not a pious thing to do. Returning to the same issue later, Rav Breisch, while admitting that his ruling meets the technical demands of halacha, expresses his regret that he ever permitted it. See חלק ג' צ"ח א, ס"ב וגם חלק ג' צ"ח א, ס"א, חלק יעקב חלק א, ס"א, חלק י"ג דף רנט Encyclopedia Talmudit and also the

In his responsa, Rav Moshe Feinstein writes that a man may ride in a car with his wife who is in labor since she may be afraid to go alone to the hospital.³⁸ He even permits a person to take medicine on Shabbat, which he would otherwise not be permitted to take, if the person's mental anguish at not being able to take it might result in a nervous breakdown. But at the end of the responsum, Rav Feinstein notes laconically, *אנשים כאלו אין מצוי*, "there are no such people."^{38a}

What all this amounts to is a deep awareness of the power which mind has over matter. At the same time that halacha is sensitive to the subtle effects which a person's psychological state can have upon his physical well-being, all precepts cannot be swept aside just because the person is going to get upset about observing the Shabbat regulations. Some rabbis give considerable weight to the patient's psychological needs, while others limit the latitude of that consideration.

The preceding discussion has a direct bearing on the question of visiting a sick person in the hospital. If a person is confined to the hospital on Shabbat, far from family or friends, what may one do to prevent his being deeply unhappy and lonely on Shabbat? Rav Brown³⁹ writes that it is permitted to transgress rabbinic precepts — but not biblical ones — if it is important for the patient not to be alone. For example, it would be permissible to have a Gentile drive the visitor to the hospital. Rav Brown also cites the opinion of *Pri Megadim* who is prepared to allow even biblical laws to be set aside.⁴⁰ The *Chazon Ish* considered it important for a sick person to have visitors so that the hospital staff would recognize that he has many friends who are concerned with his welfare, and therefore would not neglect him.⁴¹

38. אגרות חזון איש קמ"א א. אגרות משה, או"ח א, קלב ל.

38a. חלק ג, או"ח סי' נ"ג.

39. שערים מצוינים בהלכה קונטרס אחרון צ"ב סי' ו.

40. For a full discussion, see יא"ג, פרק יט, כהילכתה, שמירת שבת כהילכתה, פרק יט, יא"ג, גם חלקת יעקב חלק א' סי' ד.

41. או"ח תכ"ד ב.

Medication Over An Extended Time

Everyone, comments Rabbi Shlomo Kluger,⁴² writes that medication being taken before Shabbat can be continued on Shabbat. What is the source for this leniency? He proceeds to analyze the conclusion to determine if it is halachically accurate.

In the Gemara⁴³ there is a discussion among the rabbis about taking *chilthit*, a certain substance which was dissolved in water and then drunk to relieve asthma. Rav Hiyya reports:

אתאי שאילתיה לרב הונא ואמר... שורה בצונן ומניח בחמה
כמאן דשרי אפילו למאן דאסר היינו היכא דלא אישתי כלל
אבל הכא כיון דאישתי חמשא ומעלי שבתא אי לא שתי
בשבת מיסתכן.

I went and asked R. Huna [about doing this] and he answered me... He may dissolve it [the medication] in cold water and place it in the sun. Is this only according to him who permits dissolving? No, even according to him who forbids it; that is only if one had not drunk at all. But here, since he had drunk it on Thursday and Friday, if he would not drink it on Shabbat, he would be endangered.

Shulchan Aruch, basing his *psak* on this talmudic text, rules:⁴⁴

ואם שתה ממנו יום חמישי ויום ששי וצריך לשתות גם
בשבת מותר שכך הוא דרך רפואתו לשתותו שבעה ימים זה
אחר זה... מפני שהוא סכנה אם לא ישתה ממנו.

If he drank [a medicinal potion] on Thursday and Friday, and he needs to drink also on Shabbat, he is allowed, for this is the way he is healed, to drink it for seven days in a row. [Therefore he may do it] because it is a danger if he does not drink it [on Shabbat].

42. ספר החיים שכ"ח ל"ז.

43. שבת ק"מ.

44. שכ"א י"ח.

Since both in the Talmud and in the *Shulchan Aruch* the element of danger is given as the rationale for permitting medication on Shabbat, one might assume that if there is no danger to the patient in not taking it, then even if he began the course of medicine a few days before, he is not permitted to continue during Shabbat. Hence it is somewhat surprising to read the law in *Mishnah Torah* as follows:⁴⁵

שתה חלתית מקודם השבת והרי הוא שותה והולך מותר
לשתותו בשבת.

A person who drank *chilthit* before Shabbat can continue to drink it on Shabbat.

Significantly, Rambam has included no mention whatsoever of "danger." The commentary *Magid Mishnah*⁴⁶ suggests that Rambam was using a variant text of the Talmud — instead of the phrase "he would be endangered" (מיסתכן), his manuscript read "he would get sick" (יחלה). Whatever the reasoning, it is a fact that Rambam holds that if a person would get sick again if he were to interrupt his medication, he may indeed continue. The Ran⁴⁷ seems to share this view.⁴⁸ However, it is only applicable if the person will become truly sick and not only be in pain.

Discussing this topic, Rav Waldenberg⁴⁹ concludes that if stopping the medication over Shabbat would cause the patient considerable pain, it is possible to rely on the authorities cited by Rav Kluger and continue taking it.

Rav Waldenberg adds that in general today one can be lenient about taking medicine on Shabbat since it is not our custom to grind herbs ourselves. Rav Neuwirth⁵⁰ is also lenient if the course of medication has already been started, but the author of *Eglei*

45. הלכות שבת כא:כב.

46. מגיד משנה לרמבם שם.

47. שם, בגמרא.

48. השוה רמבם, הלכות שבת כב:ז.

49. צוץ אליעזר חלק ח' קמ"ח.

50. שמירת שבת כהלכתה דף רב"ז.

*Tal*⁵¹ prefers a strict interpretation of the talmudic text and only allows one to continue if it will endanger him to stop the treatment.

In an uncharacteristically terse responsum, Rav Moshe Feinstein⁵² finds no *heter* whatsoever to continue taking medicine on Shabbat, unless the patient will suffer such emotional distress that he might have a nervous breakdown. But Rabbi Greineman⁵³ cites the *Chazon Ish*, permitting taking medicine on Shabbat if it is part of a course of treatment which requires the person to take the medicine for a number of days consecutively.

Chronic Conditions

A somewhat different situation is presented by the patient suffering from a chronic disease. Diabetes, for example, is a condition which is considered life-threatening; thus the diabetic without question may take whatever medication is required to maintain the disease under control. However, some procedures which are utilized to monitor the patient's vital signs and are essential to the long-term management of the conditions might be subject to halachic restriction. An instance of this is testing for sugar in the urine, which the diabetic does by inserting a sensitized stick or paper into a urine sample and determining, by means of color changes which ensue, whether his condition is stable or not. A potential halachic problem is involved in causing the stick to change color, but Rav Brown⁵⁴ rules that it is permitted.

As for taking insulin by injection, Rabbi Neuwirth⁵⁵ permits it, provided that the supervising doctor asserts that it is essential for the patient. However, if the doctor says that alternately the diabetes could be controlled by strict supervision of the diet, Rabbi Neuwirth would not permit the patient to opt for insulin-injection therapy; however, on Yom Tov he would allow it, for on Yom Tov

51. אגלי טל-מלאכה טוחן כג.

52. אגרות משה, או"ח ח"ג נג.

53. שערי יושר על מועד, סוף הענין.

54. שערים מצוינים בהלכה צא"א.

55. שמירת שבת כהלכתה שט"ו י"ח.

it is not proper to curtail one's enjoyment of food.

Eye Care

In halachic conceptualization, "the eyes are connected to the heart."⁵⁶ Since vision is such a critical factor in the quality of one's life, Jewish law considers a threat to one's sight as virtually equivalent to a threat to his life, as is evidenced in the Talmud:⁵⁷

Someone who has pain in his eyes or eye, or tears gush from them... we transgress the Shabbat for him.

However, absent such severe symptoms, the customary restrictions regarding healing on Shabbat apply also to eye care. Therefore, the Gemara⁵⁸ does not permit rinsing out the eye with wine, since this act was clearly done for its (supposed) therapeutic value, nor does it sanction other external applications of medicine to the eye.

Nevertheless, the *Shulchan Aruch*⁵⁹ rules that if the act could be interpreted as being done for hygiene, not for healing, it would be permitted. Thus, if someone wants to wash out his eye, he may do it; if he wants to use a special solution for it, however, the mixture should be prepared before Shabbat.

The author of *Shmirat Shabbat Kehilchatah*⁶⁰ does allow a person in pain to administer drops to his eyes or to use an eye cup for rinsing; in some cases he even permits a salve to be placed in the eye, although great care must be taken not to smear the salve, only to let it exit from the tube directly on to the eye.

Related Areas

Investigating the *gezera* of *refuah*, one is led down many bypaths of halacha, regarding both Shabbat law and other areas of Jewish jurisprudence. As we have noted, any action which furthers

56. עבודה זרה כח:.

57. עבודה זרה כח:.

58. שבת קח:.

59. שכ"ח כ"א.

60. כא:ו.

the healing process is liable to be included under the rubric of "refuah." Rabbis have considered many aspects of this issue in their responsa and commentaries; the subjects cover a wide gamut of activities:

(1) Temperature

Taking a person's temperature is a question whose ramifications have to be considered from two angles — (1) Measuring is forbidden on Shabbat; does this include measuring temperature? (2) Does taking the temperature constitute "healing?"

The *Shulchan Aruch*⁶¹ rules that it is forbidden to take an accurate quantitative measurement of a substance, whether on Shabbat or Yom Tov. Thus, if one is cooking or baking on Yom Tov, which is permitted, one is nevertheless not allowed to measure the ingredients precisely. One should not spoon flour, for example, into a measuring cup to get an accurate amount. The reasons for this *issur* have been given as עובדא דחול, that precise measuring makes it like an act done on an ordinary day; alternatively, the reason is given that נראה דמורד למכור, it resembles measuring as if to sell.⁶²

It remains to determine whether measuring the temperature is considered "measuring" within the meaning of that term halachically. While conceding that measuring items is forbidden, the *Shulchan Aruch*⁶³ adds that "it is permitted to take a measurement for a mitzva" — מותר למדור מדידה של מצוה. In the course of his discussion on this, the author of *Mishnah Brurah* comments,⁶⁴

דמדידה רפואה היא ורפואת הגוף מצוה היא וגזירת שחיקת
סממנים לא שייך בזה.

Measuring is [a step in] healing, and healing the body

61. א"י תק"ו.

62. א"י שכ"ג.

63. א"י ש"ד.

64. שם, אות ל"ו.

is a mitzva; the *gezera* against pulverizing herbs does not apply here.

On the other hand, Rav Moshe Feinstein,⁶⁵ in also permitting the taking of temperature, states his opinion that it is not even medical treatment; rather it merely informs the person that he is sick and that healing is required. In no way does this fall under the category of healing, which is the subject of the *gezera* under discussion. A similar attitude is mirrored in *Tzitz Eliezer*.⁶⁶ Parenthetically, it is worth mentioning that in his next responsum, Rav Feinstein expresses his opinion that a temperature of about 102° F warrants, even mandates, desecration of the Sabbath if that be necessary to cure the patient, for he considers such an elevation to be an indication of a life-threatening condition. Some rabbis rule⁶⁷ that if a person has above 38° C (about 100.4° F) he may take aspirin to lower the fever, but others⁶⁸ do not agree that any specific elevation is the criterion for deciding whether one may desecrate Shabbat. The author of *Shmirat Shabbat Kehilchatah* writes that doctors have informed him that at times only low-grade fever accompanies a life-threatening illness.⁶⁹ The *Chazon Ish*⁷⁰ rules that even slight temperature should be considered grave danger for a young child.⁷¹

A modern wrinkle in this old question has been brought about with the recent introduction of new devices for measuring temperature. In the words of *Tzitz Eliezer*⁷², there is now available "a thermometer which is made like a small strip of plastic film, and when it is affixed to the forehead, after a few moments, it registers the condition of the patient, whether he has fever or not." These

65. אגרות משה או"ח א. קכ"ח.

66. ציץ אליעזר חלק ג' י.

67. קצות השולחן קל"ח בדי השולחן ל"א.

68. שמירת שבת כהלכתה כ"ג.

69. שם.

70. או"ח נט"ד.

71. חלקת יעקב חלק ג:כד. See also the lenient opinion of

72. "המודר"חום הזה עשוי בצורת רצועת סרט קטנה של פילם וכששמים ומהדקים אותו על המצח אוי כעבור כמה שניות מתורעים על מצבו של החולה אם יש לו חום על ידי הופעת אותיות לאטיניות מאירות על הסרט".

"new-fangled" thermometers indicate the elevation by letters, numbers, or some other coloration of sensitized material in the device.

Rabbi Ovadiah Yosef⁷³ mulls over the halachic questions implicit in the use of these gauges — when body heat causes letters, figures, or dots to become visible on the adhesive strip on his forehead, is this considered "writing on Shabbat?" He notes that the temperature read-out does not last — shortly after the "thermometer" is removed from the body, the figures fade. Can the short-lived appearance of figures be considered "writing?" If there is no act of writing which causes the figures to appear, is it still forbidden on Shabbat?

As is his wont, Rav Yosef examines the topic exhaustively, citing many relevant opinions on the matter. His own lenient ruling is based on the response of Ramo,⁷⁴ who permitted opening or closing books which have writing stamped on the sides of the pages, since this is not the "normal" way of writing. By analogy, neither is the temperature strip's registering of figures or letters the "normal" act of writing.⁷⁵ As final support for his argument, he cites the biblical precedent of King David, who consulted the *Urim VeTumim* on Shabbat, even though its response was effected by "illumination" of the letters inscribed upon it.

(2) Vitamins

Vitamins are ingested by many people in the belief that they promote good health. Are they medicine — or food? The answer to this apparently trivial distinction will have a radical effect on the halacha as it pertains to taking vitamins on the Sabbath.

In *Tur*⁷⁶ it is written:

73. יחזק דעת ד:כ"ט.

74. שאלה קי.

75. In a wholly different context, Rav Feinstein discusses the prohibition of writing on the Shabbat as it might apply to the practice in some synagogues to position numbers on a display board indicating what page the *Chazan* is up to. אגרות משה א"ח א קל"ה.

76. שכי"ח:לו אות מג.

כל אוכלים ומשקים שהם מאכל בריאים מותר לאכלם ולשתותן אע"פ שהם קשים לקצת בריאים ומוכחה מילתא דלרפואה עבד אפ"ה שרי וכל שאינו מאכל ומשקה בריאים אסור לשתותו לרפואה ודוקא מי שיש לו מיחוש בעלמא והוא מתחזק והולך כבריא אבל אם אין לו שום מיחוש מותר.

Any food or drink which is food for healthy persons may be eaten [on Shabbat] even if it is difficult [to digest] for some healthy persons and even if it is evident he is taking it for medical purposes, even so it is permitted. But whatever is not food or drink for healthy persons it is forbidden to ingest it for healing — but all this refers only to a person who has a vague malaise but is yet able to overcome [it] and walks around like a healthy person. However, a person who has no pain is permitted [to ingest it].

The essence of this ruling is that if a substance is considered food by most people, then a person can eat it on Shabbat, even if he happens to be doing so for the healing qualities of this food. Conversely, a substance which is perceived to have healing qualities may not be taken by a person who is slightly sick on the Shabbat — but if he is not sick at all, there is no restriction in this regard. This sweeping *heter* is limited, according to *Magen Avraham*⁷⁷, to a healthy person who eats the medicinal substance not for its healing properties but to satisfy his hunger. If he is eating it simply because he is hungry, then there is no restriction; on the other hand, if he is eating it for its health-enhancing powers, then he may not do so on Shabbat. According to *Magen Avraham*, it was not the intention of *Tur* to abrogate the *gezera of refuah* for a healthy person. However, the *Bet Yosef*⁷⁸ interprets the dictum to mean that a person who is not sick at all may ingest any food or substance he desires.

Obviously, the difference in interpretation will play a crucial

77. שם

78. או"ח שכ"ח

role in determining the halacha. If we accept the *Tur* at face value as does *Bet Yosef*, then a healthy person may take vitamins on Shabbat without qualms; however, if the opinion of *Magen Avraham* prevails, the following decision has to be made: Are vitamins substances which people take in order to be healed? Then a healthy person cannot take them on Shabbat, unless he is eating them to satisfy his hunger. But if vitamins are food, not medicine, then one may ingest them on Shabbat.

In *Mishnah Brurah*⁷⁹, the opinion of *Magen Avraham* is accepted; according to this ruling, if a person wants to take vitamins for their therapeutic value, he may not do it on Shabbat; the author of *Shmirat Shabbat Kehilchatah*⁸⁰ follows suit.

However, in a lengthy responsum,⁸¹ Rav Moshe Feinstein tackles the *issur* from another vantage point altogether. He opines that it is possible to view the talmudic *gezera* against healing as referring in the first place *only* to a person who is not feeling well — perhaps, due to his concern over his well-being, he might forget the *issur* of “grinding herbs.” One not sick at all was never presumed to be liable to such inadvertent error — and the *gezera* was never intended for him at all! This is quite a sweeping dispensation, radical in its implications; although Rav Feinstein cites Tosafot and Rashi in support of his theory,⁸² he concludes his responsum with the following ruling: The strict opinion of *Magen Avraham* is to be followed if the person feels weak and expects the vitamins to help him regain his strength; but if a person takes vitamins on the theory that they are helpful in building up the body’s ability to resist disease, there is no reason for him not to take them on Shabbat too. Although Rav Feinstein does not spell it out, he seems to be saying, in the latter instance, that if a person takes vitamins for the same reason he eats many foods — because a well-balanced diet promotes well-being, then basically they are

79. שכ"ח ק"כ

80. כא:א

81. או"ח ג:נד

82. See also קונטרס אחרון דף רצ"ד צא, שם טע"ף ב'

considered food, and there is no reason to avoid them on the Sabbath.

The distinction between "healing" and "promoting good health" is one which continues to characterize the halachic discussions in regard to *refuah*. The former is eschewed, but the latter is often permitted. *Ketzot HaShulchan*⁸³ finds nothing wrong with using an inhaler (vaporizer) since it only provides relief but does not actually promote healing. The same lenient ruling applies to using mouthwash, which removes or masks any mouth odor present, but does not cure the underlying condition which causes bad breath. But *Shmirat Shabbat Kehilchatah*,⁸⁴ with a more restrictive interpretation of the halacha, permits the inhaler only if the patient has such a terrible cold that he is bed-ridden or else if his entire body aches. Clearly, he considers an inhaler to be efficacious in easing the cough or congestion, even if only temporarily; on these grounds, it is *assur* as *refuah*.

Rav Waldenberg⁸⁵ makes the same distinction in discussing whether one may take bicarbonate of soda on Shabbat. In the same responsum he renders a lenient opinion with respect to a woman's taking birth control pills on Shabbat.⁸⁶ Since the pills do not in any sense make her healthy — their only purpose being the avoidance of pregnancy, which might make her sick — he allows them on Shabbat (assuming that she is permitted to use them altogether). Following the same reasoning, *Shmirat Shabbat Kehilchatah*⁸⁷ is inclined also to be lenient.⁸⁸

(3) Sleeping Pills

Next we have to consider the situation of a person who is not sick, taking a pill which does not heal — a sleeping pill. Is there any reason not to do it on Shabbat?

Many *poskim* have been quite lenient about this, for a variety

83. קצות השולחן קצר בבדי השולחן לא.

84. פרק כא:ז.

85. ציץ אליעזר חלק ח טריטו ד"ה ויש גם.

86. דף קמ"ה ד"ה וכדא.

87. חלק ב דף רצ"ד.

88. ראה גם חלקת יעקב חלק ג - כ"ג.

of reasons. One avenue follows the theory that if a person's entire body is in pain, he is allowed to take medicine on Shabbat⁸⁹ and "when a person lacks sleeps, it is a distress for the entire body."⁹⁰

*Ketzot HaShulchan*⁹¹ is also permissive, but bases his ruling on the absence of any healing performed by sleeping pills — they merely induce sleep, but do not heal. This, he maintains, is analogous to the case cited in *Shulchan Aruch*.⁹²

מי שנשתכר שרפואתו היינו לסוך כפות ידיו ורגליו בשמן
מותר לסוכם בשבת.

A person who got drunk, whose "cure" is to anoint the palms of his hand and feet with oil, may anoint them on Shabbat.

However, the permission to take sleeping pills is extended only to those pills which only make a person sleep; but if the pill also contains substances which heal, it may not be taken.⁹³

Not all *poskim* agree that a sleeping pill may be taken. *Chelkat Yaakov*⁹⁴ is one of those who opposes any leniency on this issue. In a reverse situation, Rav Weiss refuses to grant permission for a man to take pills to keep him awake, even if his purpose is to be able to stay up on Friday night and learn Torah.⁹⁵

(4) Exercise

As we have seen, the implications of the *gezera* of healing on Shabbat extend to a surprisingly wide sphere of human activity. In its broadest sense, the *gezera* has been understood to prohibit anything which is done to restore the body to health or for health improvement. But how far does this take us?

How should one define an activity which is designed to

89. שמירת שבת כהלכתה כ"י.

90. בבא בתרא כ"י.

91. קלח בדי השולחן אות לא.

92. אורח חיים שכ"ח מ"א. For the same reason, *Shulchan Aruch* (שם, ל"ח) permits a cantor to eat a raw egg on Shabbat to enhance his voice.

93. קצות השולחן שם, ט"ז.

94. חלק ד' מ"א.

95. מנחת יצחק חלק ג' כ"א.

strengthen the body? Is that, too, part of "healing?" Many *Acharonim* do indeed consider מזוג הגוף, conditioning the body, as "healing" within the intent of halacha.

The Mishnah in Shabbat⁹⁶ teaches:

סבין וממשמשין אבל לא מתעמלין ולא מתגררין

[On the Shabbat] one may anoint and rub but ought not to exercise or knead [the muscles].

Rashi explains that a light body massage is acceptable, but one should not massage strongly or pummel the muscles to increase circulation. In his Code,⁹⁷ Rambam adds that one should not use his body on the Shabbat in such a way as to raise a sweat, because this is healing:

שאסור ליגע את עצמו כדי שיוזע בשבת שהיא רפואה.

Following Rambam's format, *Shulchan Aruch*⁹⁸ also forbids any activity which raises a sweat. *Mishnah Brurah*⁹⁹ explains that it is forbidden to exercise — since medication is given to raise a sweat in the patient, then exercise, which also raises a sweat, is forbidden as a form of *refuah*. It is interesting to note, however, that if a person exercises for pleasure only, without thought of the health benefits involved, there is no reason not to do it. Quite simply, *Shulchan Aruch* rules¹⁰⁰ בחורים המתענגים בקפיצתם מותר "Youths who enjoy jumping — it is permitted." By extension, if it is not evident to the observer that an activity is done for health reasons, it may be undertaken, as Ramo¹⁰¹ comments, וכן לטייל "and it is also permitted to take a walk."

However, *Mishnah Brurah* prohibits running on Shabbat, since it is obviously a health-related activity¹⁰² although *Shaar*

96. קמו.

97. משנה תורה.

98. ביאור הלכה ד"ה כדי שיוזע. See also שכי"ח מ"ב.

99. שם, אות ק"ל.

100. ש"א ס"ב.

101. שם.

102. שם.

*HaZion*¹⁰³ cites the opinions permitting running in order to build up an appetite. In *Shulchan Aruch*¹⁰⁴ there is also some discussion about playing ball on Shabbat. Writing in the last century, Rabbi Hoffman¹⁰⁵ vacillates between the lenient view, which he is not prepared to accept, and the strict opinion, which he also does not want to lay down as law. Finally, he rules that if one is asked, he should not permit playing ball on Shabbat, but in a place where the custom is to be lenient, one need not announce that it is forbidden. But *Shmirat Shabbat Kehilchatah*,¹⁰⁶ in a brief comment, forbids all exercise.

This survey of halachot regarding healing on Shabbat, although brief and certainly not intended as a comprehensive review of the subject, has, it is hoped, provided an insight into the breadth and complexity of a subject about which there is a great deal of discussion. What has been written here should not be regarded as a compendium of *piskei halacha* but as an introduction to a difficult subject for the person concerned about meticulous Shabbat observance.

103. שער הציון אות ט

104. אורח ש"ח סי' מ"ה

105. מלמד להועיל אורח נ"ג

106. פרק כא:יב

The Contemporary Synagogue

Rabbi Joseph Stern

ואה"י להם למקדש מעט אמר רבי יצחק אלו בתי כנסיות ובתי מדרשות
שבבבל (מגילה כט.)

Synagogues and Torah centers in the Diaspora function as a
mini-Temple (Megilla 29a).

בבבל היכא, אמר אביי בבי כנשתא דהוצל ובבי כנישתא
דשף ויתיב בנהרדעא.

Where does G-d reside? In the synagogues of
Nehardea and Hutzel (ibid).

The synagogue, more than any other institution, has kept the
Jew spiritually intact during more than two millenia of *galut*.
Moments of joy and grief alike were shared in the Shul. Even in
Judaism's darkest period, the Holocaust years, subterranean
synagogues flourished in the ghetto catacombs and in the darkened
cellars.

Maimonides summarizes the mitzva of building prayer houses
in the following succinct phrase:¹

כל מקום שישבו עשרה מישראל צריך להכין לו בית שיכנסו
בו לתפלה ומקום זה נקרא בהכ"נ.

Every quorum (*minyan*) of Jews is obligated to
designate a house for prayer.

1. רמב"ם פ"א הלכות תפלה הלכה א.

*Congregation Agudath Achim, Brooklyn; Assistant Professor
of Business, Jersey State College*

Authorities differ whether a synagogue's unique status (i.e., the respect accorded to it) is based on biblical law² or is of rabbinic origin.³ However, all commentators agree that the highest standards of decorum, integrity and deference to halachic tradition must be practiced vis-a-vis the *Beth Knesset*. Indeed, the *Shulchan Aruch*⁴ devotes some five chapters solely to the topic of synagogue procedure.

As times change, many of the synagogue's externalities, its structure and outer facade as well as its internal procedures, evolve. This evolutionary trend has been particularly accelerated in post-war America. At times the changing synagogue seems to flirt with the "cutting edge" of halacha; many of the innovations skirt halacha's outer parameters and pose serious problems of substance as well as style.

The purpose of this paper is not to determine normative halacha, (הלכה למעשה), the exclusive domain of local Torah authorities and recognized halachic luminaries, but simply to define parameters of change: which recent trends are acceptable, perhaps even commendable from a halachic perspective, which may be tolerated on an ad hoc basis, and which procedures are totally objectionable. This article will consider recurring issues such as synagogue structure with special emphasis given to the *Mechitza* and *Bimah*, alterations in ritual (נוסח), vocalization (הברה), appropriate responses to a synagogue's changing milieu (deteriorating neighborhoods), Orthodoxy's strategy for dealing with nonobservant brethren and their houses of worship (Reform Temples and Conservative edifices), use of the shul for mundane purposes, and some comments regarding a shul's internal procedure (selection of trustees, hiring and retention of personnel).

Synagogue Structure

No issue has aroused more controversy, friction, and animosi-

2. דעת יראים השלם ס' ק"ד וסימן ת"ט. וכ"מ דעת הרמב"ם במגן אברהם שבראש ספר היד ל"ת ס"ה ובווה"ק (רעיא מהימנא בשלח נט:): משמע דהוא מ"ע דעשו לי מקדש

3. ר"ן מגילה פג.

4. שו"ע או"ח סימן ק"נ"ד.

ty than the *Mechitza* separating the sexes during services. A careful examination of the *Mechitza's* origin would perhaps clarify its purpose and lead to a better appreciation of some of the halachic controversies swirling around it.

Though not cited explicitly in *Shulchan Aruch* (perhaps, as *Tzitz Eliezer*⁵ suggests, because of its self-evident nature — (who would contemplate a *Mechitza*-less shul?), the *Mechitza* was already present in the Beth Hamikdash, as detailed in *Masechet Succah*.⁶

ת"ר בראשונה היו נשים מבפנים ואנשים מבחוץ והיו באים
לידי קלות ראש התקינו שיהיו נשים יושבות מבחוץ ואנשים
מבפנים ועדיין היו באין לידי קלות ראש... נשים יושבות
מלמעלה ואנשים מלמטה.

The Gemara speaks of three phases leading to the construction of a *Mechitza* during the ceremonies associated with the libation of water in the Temple times, (נסוך המים). At first, women stood within and men outside. Recognizing that excessive frivolity resulted, leading rabbis reversed the order, seating men on the inside of the Temple courtyard and women on the outside. This procedure, however, was also ineffective. Eventually, a balcony was erected for women.

The Gemara finds ample precedent for construction of a balcony (a seemingly inappropriate appendage to the Beth Hamikdash) from one of history's most unusual funeral eulogies, the eulogy for the "Messiah son of Joseph" as foretold by the prophet Zachariah, who speaks of the seating among the funeral entourage.^{6a}

וספרה הארץ... משפחות בית דוד לבר ונשיהם לבר.

5. שו"ת ציץ אליעזר חלק ז סימן ח.

6. סוכה נ"א.

6a. זכריה יב.

And the land mourned... the families of the House of David separately, and their wives separately.

If at the somber occasion of a funeral, where frivolity is less of a concern, separate seating is nevertheless required, certainly at joyous occasions all the more so!! Rabbi Moshe Feinstein⁷, perhaps the leading respondent on matters regarding the modern synagogue and especially the *Mechitza*, deduces from the above passage that erection of a *Mechitza* is a biblical obligation, arguing that no rabbinic edict would have been sufficient to justify construction of a balcony on the premises of the Beth Hamikdash.

In contemporary times, the height of a shul's *Mechitza* has become almost the "acid test" of its Orthodoxy. Careful examination of the relevant talmudic and halachic sources indicates that a *Mechitza's* required height is closely linked to its "raison d'être." Why erect the *Mechitza*? Several reasons are suggested by *poskim*. Some authorities⁸ argue that a *Mechitza* prevents "gazing at the opposite sex" during services. Proponents of this opinion (among them much of the Chassidic community and segments of the "Yeshiva world") cite the statement of Rambam in *Pirush HaMishnayot*:⁹

מקום הנשים למעלה ממקום האנשים כדי שלא יסתכלו
האנשים בנשים.

The place of the women is above the men's place, so that the men will not gaze at the women.

One of the leading adherents of this viewpoint, the Satmar Rov זצ"ל, discouraged attendance at any services where men could see the women during davening. Similarly, another advocate of this approach, Rav Wosner¹⁰ of Bnei Brak, prohibits a *Mechitza* constructed of transparent glass, arguing that this device circumvents the entire purpose of separate services. In reality, the

7. שו"ת אגרות משה ח"א סימן ל"ט.

8. דעת האדרמו"ר מסאטמאר ועמו כל רבני אונגארן הובא בשו"ת שרידי אש ח"ב סימן י"ד.

9. סוכה פרק ה משנה ב.

10. שו"ת שבט הלוי ח"א סימן כ"ט.

insistence upon a *Mechitza* blocking any sight of women during davening is not a novel approach developed recently. An encyclical signed by seventy leaders of 19th century Hungarian Jewry, led by Rav Shlomo Ganzfried, prohibited entry into any shul that lacked such a *Mechitza*.¹¹ Similarly, Maharam Schick¹² exclaimed "חלילה לשתוק," no spiritual leader may remain silent if a substandard *Mechitza* is erected.

R. Moshe Feinstein¹³, while commending the laudable intentions of this approach, justifies the widespread practice in many modern synagogues not to insist upon a *Mechitza* cordoning off women. In effect the school of thought widely popular in Chassidic circles, demands a curtain or other partition separating the sexes during davening. He notes that the Gemara (cited previously) makes no mention of "viewing" and only insists "שלא לבוא לידי קלות ראש" that no excessive frivolity prevail." While Rambam¹⁴ alludes to "viewing" in *Pirush HaMishnayot*, yet in his Code of Law, he follows the talmudic text, which notes that the separation of the sexes was designed to prevent their "mixing" socially.

היו מתקנין במקדש מקום לנשים מלמעלה ולאנשים מלמטה
כדי שלא יתערבו אלו עם אלו.¹⁵

In the Beth Hamikdash, a place was set aside for women above and men below, so they should not mix with each other.

Rav Moshe Feinstein contends that the balcony in the Beth Hamikdash was not surrounded by a railing. Merely locating the women's gallery in an elevated location was sufficient guarantee that "frivolity" would not ensue. Moreover, according to Rambam's opinion, stated elsewhere in his *Pirush Hamishnayot*,¹⁶

11. הובא בשו"ת ציץ אליעזר חלק ז סימן ח

12. חלק א"ח סימן ע"ז

13. שו"ת אגרות משה חלק א סימן מ

14. סוכה פרק ה משנה ב

15. רמב"ם פרק ה מהלכות בית הבחירה ה' ט

16. מדות פ"ב משנה ה

the *Mechitza* was not an elevated balcony, but rather a series of steps (a staircase-like structure) erected alongside a wall, or perhaps the wall itself was erected in stepwise formation, so that women could view the libation of water proceedings. At any rate, neither view seems to require a barrier preventing sight of the opposite sex. While many respected authorities¹⁷ insist upon a *Mechitza* preventing viewing (in effect a barrier covering the women's entire profile, head as well as shoulders) Rav Yechiel Weinberg¹⁸ supports Rav Feinstein's contention.

If halacha does not require a complete barrier preventing viewing, what then are the minimal requirements? Rav Moshe Feinstein¹⁹ suggests in a number of responsa compiled over a generation that a height of 18 *tephahim* (about shoulder height) is adequate for a *Mechitza*. He considers various opinions regarding the equivalence of a *tephah* (is it 4 inches, 3½ inches or perhaps even less?) and concludes that a *Mechitza* of 5 feet would meet minimal requirements. One extenuating factor in Rav Moshe's opinion is the contention that today's woman is somewhat shorter than her talmudic counterpart. In addition Rashbam²⁰ maintains that a 17½ *tephahim* height corresponds to shoulder length.

In one of his earliest response on the topic, Rav Feinstein²¹ strongly rejects the contention that a barrier of 10 *tephahim* (40 inches at most) would suffice to separate the sexes. The proponents of that approach argue that the sole purpose of a *Mechitza* is to prevent intermingling, שלא יהיו מעורבין, irrespective of any frivolity that may ensue. Rav Moshe quite convincingly demonstrates that it is not merely intermingling, but the mere possibility of frivolity — even without meeting (i.e. conversing, holding hands) — that must be remedied. While a *Mechitza* of 10

17. מדברי התיו"ט במשניות סוכה פ"ה משנה ב' בהסתכלות מביאה לידי קלות ראש ועיין בשו"ת ציץ אליעזר חלק ז' סימן ח' ובשו"ת זכרון יהודה חלק א' סימן ס"ב ובספר טהרת יו"ט חלק ו' ובשו"ת מנחת יצחק חלק ב' סימן כ'

18. שו"ת שרידי אש חלק ב' סימן כ'.

19. ראה אג"מ חלק א' סימן ל"ט מ"ד ובח"ב סימן מג ובח"ג סימן כ"ג כ"ד ובח"ד סימן כ"ט ל"ג.

20. בבא בתרא קי"ד והכוון ועיין תוס' שם.

21. שו"ת אגרות משה ח"א סימן מא.

tephahim constitutes a sufficient barrier for Sabbath laws,²² in this instance a more formidable structure is required.

Over time, various inroads have been made, deviations from the accepted structure of *Mechitza* posing new halachic concerns. For example, synagogues have experimented with a "two-phased" *Mechitza*, a solid barrier 50 inches high followed by a lattice type structure for another 13 inches. Rav Moshe²³ urges against acceptance of this innovation. But in other responsa,²⁴ he seems to permit a similar type of *Mechitza*, based on the miniscule nature of the gaps in the lattice work. Apparently, insignificant gaps in the *Mechitza*, so small that the possibility of frivolity does not occur, may be acceptable. Anything more substantial, allowing the possibility of conversing or touching, would be unacceptable.

In other instances, synagogues use a glass *Mechitza*, of sufficient height but where it is possible for men and women to view each other during services. Rav Feinstein²⁵ disapproves of such arrangements, suggesting that even if minimal requirements for a *Mechitza* be attained, other halachic concerns arise (e.g. women not dressing appropriately). He recommends, rather, the use of one-way mirrors, preventing frivolity but yet affording the women full view of the *tefilla*.

Another frequent concern has been the attempt to "evade" halachic criteria by complying with the technical requirement of the *Mechitza's* height but simultaneously elevating the women's section. For example, some synagogues erect a *Mechitza* of 70 inches beside the men's section but then elevate the women's section some 40 inches so that the women's section in effect is surrounded by a barrier of only 30 inches. Rav Moshe Feinstein²⁶ opposes any such circuituous measures, arguing that such devices defeat the *Mechitza's* *raison d'être*.

22. שו"ע או"ח סימן שמה סעיף ב.

23. אג"מ או"ח ח"ד סימן כט.

24. שם סימן לב.

25. אג"מ חלק א סימן מג.

26. אג"מ ח"ד סימן ל"א.

In summation, Rav Moshe postulates an "order" of *Mechitzot*. Highest preference is given to a balcony that also is shielded (or surrounded by curtains) thus preventing viewing. If necessary, the balcony alone suffices. Under extenuating circumstances, a *Mechitza* on the same level as the men's section may be erected, rising to a minimal height of 60 inches. In another responsum, Rav Moshe Feinstein²⁷ encourages a synagogue not to switch from a balcony to a ground-level *Mechitza*, arguing that this may serve as the precursor to deviations from halacha.

Does the requirement of the *Mechitza* absolutely forbid women (and especially young girls) from entering the men's section of shuls? Rav Wosner²⁸ opposes youth services in which boys and girls over age five would *daven* together, since there is an obligation to train children according to the correct way of performing mitzvot. However, an occasional unsolicited appearance by a woman in the men's section does not pose serious halachic concerns. Rav Feinstein²⁹ notes that Chana entered the sanctuary and held a dialogue with Eli, the High Priest (see I Samuel 1.) Elsewhere, we find mention of women entering the sanctuary.³⁰

Is the *Mechitza* requirement limited to prayer services, or is it mandatory on other occasions as well? *Mishnah Brurah*³¹ seems to imply that a *Mechitza* erected for a public Torah lecture, while perhaps commendable, is not halachically mandatory. Rav Feinstein³² implies that it is only the convergence of two events that requires a *Mechitza* — only public events (קבוץ רבים) for a sacred purpose (i.e. קדוש וקדושה) necessitate *Mechitzot*. Not infrequently, young couples and their parents wonder and at times clash over the necessity to erect a *Mechitza* at their wedding. While certainly commendable, a *Mechitza* at a wedding according to Rav Moshe Feinstein is not imperative. While a wedding is a public

27. שם ח"ב סימן מג.

28. שו"ת שבט הלוי ח"א סימן כ"ט.

29. אג"מ ח"א סימן מא.

30. קידושין נב.

31. אור"ח סימן שט"ו סק"ה.

32. אג"מ ח"א סימן מ"א.

gathering, it is not a gathering for a holy purpose, דבר שבקדושה, or for public prayer. Rav Feinstein deduces his criteria from an interesting hypothesis. We know that women were obligated to partake of the paschal sacrifice³³ and would join in the communal meal eating it; in that instance a *Mechitza* could not have been erected, for:

אין הפסח נאכל בשתי חבורות

One paschal lamb could not be eaten in two separate groups; [any barrier would segregate the group into two groups, in violation of halacha].³⁴

Some commentators³⁵ suggest that eulogies, while not necessarily requiring a *Mechitza*, should be conducted in an atmosphere of separate seating.

Bimah

Second only to the *Mechitza*, the *Bimah* (prayer platform), its location as well as its primary function, has aroused considerable controversy. Unlike the *Mechitza*, the *Bimah* and its central role in the synagogue are explicitly mentioned not only the Talmud, but also in Rambam³⁶ and *Shulchan Aruch*.³⁷ The Gemara³⁸ speaks of the massive synagogue of Alexandria and its opulent ways.

מי שלא ראה דיופלוסטין של אלכסנדריא של מצרים לא
ראה בכבודן של ישראל

One who has not seen the shrine of Alexandria has
never appreciated Judaism's glory.

In that context, the Gemara notes באמצעיתה של עץ, the *Bimah* was located in the middle. Rambam³⁹ also requires it:

33. עיין פסחים עט.

34. שם פו.

35. אג"מ ח"א סימן מ"א וציץ אליעזר ח"ז סימן ח ומנחת יצחק ח"ב סימן ס.

36. רמב"ם פי"א הלכות תפלה הלכה ג.

37. אור"ח סימן ק"ג סעיף ה ברמ"א.

38. סוכה נא.

ומעמידין בימה באמצע הבית כדי שיעלה עליה הקורא
בתורה או מי אשר אומר לעם דברי כבושין כדי שישמעו
כולם.

Apparently for acoustical reasons, the *Bimah* is placed in the middle of the synagogue "so that all may hear." Similarly, *Shulchan Aruch*⁴⁰ relates

ועושין בימה באמצע הבית שיעמוד עליה הקורא בתורה
וישמעו כולם.

They construct a platform in the center of the building so that the reader of the Torah will stand there and all will hear.

Clearly, the preferred locale is in the middle of the shul. However, a question which consistently arises but which still lacks final elucidation is whether the *Bimah's* central location is merely functional, so that congregants may hear, or an absolute unvarying requirement. May aesthetic requirements or changed acoustical systems permit a different location for the *Bimah*? May it be moved? Many authorities, especially in the wake of Reform's insistence upon moving the *Bimah* to the front of the synagogue, have maintained that באמצע בימה, the centrality of the *Bimah*, is an important test of a shul's "frumkeit." Luminaries such as *Mishnah Brurah*⁴¹ and the later *Minchat Yitzchak*⁴² railed against any shift in location and warned that any deviation in the synagogue's architecture would inevitably lead to full-scale Reform practices. Moreover, the *Chatam Sofer*⁴³ traces the *Bimah's* central location to the centrality of the altar in the Beth Hamikdash. He reasons that on Succot we circle the *Bimah* much as our forefathers paraded

39. פ"א הלכות תפלה הלכה ג.

40. ק"נ סעיף ה ברמ"א.

41. שם בבה"ל ד"ה באמצע.

42. שו"ת מנחת יצחק חלק ג סימן ו.

43. שו"ת חתם סופר או"ח סימן כ"ח.

around the altar. Evidently, the *Bimah* bearing the Torah scroll assumes the role of the altar. As such, its location must not be precipitously moved.⁴⁴

Other *Poskim*, however, view the *Bimah's* location from an essentially pragmatic perspective. Rav Yosef Karo⁴⁵ in his gloss to Rambam's Code, notes the custom, widespread already in his times, to locate the *Bimah* towards the rear of the shul.

ואל תשיבני מהבמות שבונים בימים האלו בקצת מקומות
בסוף בהכ"נ ולא באמצע... כי העמדה באמצע אינו מחויב
אך הכל לפי המקום והזמן.

...And don't answer me regarding the *Bimot* that are being built nowadays in some places at the end of the synagogue and not in the center... because erecting [the *Bimah*] in the center is not a requirement, rather it all depends on the place and the time.

The *Bimah's* location varies with a shul's size. Rambam dealt in the context of large prayer houses. But as membership dwindles, it is often more expedient nowadays to locate the *Bimah* in the rear of the shul. Others also argue⁴⁶ that if a central location is not possible, the *Bimah* should be located in the rear rather than in the front. Rav Moshe⁴⁷ agrees that the *Bimah* if at all possible should be centrally located, especially in a large shul, and he notes that synagogues locating the *Bimah* in the front are thereafter more likely to need to adopt a microphone for services due to the congregants' inability to follow the services. However, the *Bimah's* location is not the *sine qua non* of a shul, and one may attend services in a shul despite its improper location. Moreover, Rav Feinstein suggests that any prohibition against attending a shul with a misplaced *Bimah* was only imposed on a temporary basis (הוראת שעה) to contend with Reform's inroads, and it is not

44. שו"ת מהר"ם שי"ק יו"ד סימן קס"ה.

45. רמב"ם פ"א הלכות תפלה הלכה ג ובכ"מ שם.

46. שו"ת דברי מלביאל ח"ה סימן רל"ד.

47. שו"ת אג"מ ח"ב סימן מ"א-מ"ב.

currently applicable. Furthermore, even the *Chatam Sofer* would permit davening in a shul whose *Bimah* was located in the front provided that enough space exists between it and the *Aron Kodesh* to permit *hakafot* on Succot. It is the *Bimah* located directly adjacent to the *Aron Kodesh* that poses serious halachic concerns.

It should be noted that the central location of the *Bimah* is only of essence in a synagogue. According to *Minchat Yitzchak*⁴⁸ a *Beth Midrash* may locate its *Bimah* as convenient, and it seems that any other makeshift location used for *davening* may do likewise.

Another practice causing concern is the custom of the leader's davening from the *Bimah*.⁴⁹ Some rabbis⁵⁰ strongly oppose this practice, mentioning the *Magen Avraham's*⁵¹ preference (based on a talmudic allusion) for the *Shaliach Tzibbur* (*chazan*) to lead the prayers from a low position, based on the verse, "From the depths I have called to Thee."⁵² This reflects the sense of humility vital for genuine prayer. Rav Feinstein⁵³ suggests that this custom, while cited by Rambam⁵⁴, is omitted by *Shulchan Aruch* and the *Ramo* for good reason. Rambam speaks of davening from in front of the "*Teivah*," which he defines elsewhere⁵⁵ as being a receptacle for the Torah scroll, located near the front of the shul.

ובעת ששליח צבור עומד לתפלה עומד בארץ לפני התיבה.
וכשמעמידין התיבה שיש בה ספרי תורה מעמידין אותה
באמצע.

And when the prayer leader stands up for prayer, he stands on the ground in front of the *Teivah*. And the *Teivah*, which is where the Torah scrolls are stood up, is put in the center.

48. שו"ת מנחת יצחק ח"ג סימן ד"ו.

49. רמב"ם שם פ"ה הלכה ז' ובמגדל עוז שם.

50. שו"ת כתב סופר או"ח סימן י"ט וציץ אליעזר סימן כ"ב.

51. מג"א או"ח סימן צ"ט ס"ק י"ג.

52. תהלים ק"ל.

53. אג"מ או"ח ח"ב סימן כ"ו, כ"ח וח"ג סימן י'.

54. רמב"ם הלכות תפלה פ"ה הלכה ז'.

55. שם פרק י"א הלכה ד'.

Apparently, Rambam intended the *Shaliach Tzibbur* to daven from the front of the shul, not merely from the stand (*amud*) but from a structure containing a Torah scroll. Rav Moshe⁵⁶ reasons that davening from the *Bimah* is no more a deviation from desired halachic practice than the custom of using the stand. In neither case do we conform to Rambam's requirements for a "*Teivah*" containing a Torah scroll. In conclusion, Rav Moshe notes that many large European congregations did permit davening from the *Bimah*.

Microphone

Virtually all respected authorities preclude the use of a microphone on Shabbat or Yom Tov for reasons beyond the scope of this paper. The question arises on occasion as to the suitability of a microphone for weekday services, especially on Purim for Megilla readings. The issue is considered by many leading authorities, among them Rav Tzvi Pesach Frank⁵⁷, Rav Ovadia Yosef⁵⁸, Rav Shlomo Zalman Auerbach⁵⁹ and Rav Waldenberg⁶⁰. Two factors are seemingly pertinent. First, one must determine the status of the sound waves emitted by speaking into a microphone — are they merely an extension of the speaker's voice or rather a "disembodied," detached voice? Furthermore, even if soundwaves projected by a microphone are distinct from the speaker's voice, does halacha insist upon the authentic original sound or can one discharge one's obligation (for example, to hear the Megilla chanted) with an electrical impulse heard simultaneously with the initial sound?

Rav Moshe Feinstein⁶¹ and Rav Frank, as well as the *Chazon*

56. אג"מ יו"ד ח"ב סימן ה' ושם או"ח ח"ג סימן נ"ה ובשו"ת חלקת יעקב ח"ג סימן קפ"ו, ובשו"ת יביע אומר ח"א או"ח סימן ג' ושו"ת מנחת יצחק ח"א ל"ז, צ"ע אליעזר ח"ד סימן כ"ו

57. מקראי קודש דיני חנוכה ופורים עמוד צ"ו

58. שו"ת יחזקאל דעת ח"ג סימן נ"ד

59. בקובץ מאמרים בעניני חשמל (ירושלים תשל"ח).

60. שו"ת צ"ע אליעזר ח"ד סימן כ"ו וח"ה סימן י"ג

61. שו"ת אג"מ או"ח ח"ב סימן ק"ה

Ish, (as transmitted by Rav Auerbach), consider favorably the use of a microphone for Megilla reading, at least on a theoretical basis. In practice, however, Rav Feinstein opposes introducing so controversial an innovation and suggests rather that the Megilla be read in two separate places rather than using a microphone to enable a large audience to hear. Rav Yosef distinguishes between those congregants sitting close to the Megilla Reader and those sitting farther away. Worshippers who could have followed the reading even without benefit of the microphone have fulfilled their obligation; however, those who could not have heard without electronic amplification have not fulfilled their mitzva. Rav Waldenberg⁶² questions the propriety of maintaining a microphone in a shul, fearing it may lead to frivolity, especially considering children's propensity to tinker with such a device. Generally, Orthodox Jews today utilize a microphone for special occasions (e.g. an overflow crowd attending a public gathering) but avoid installing a permanent microphone in shul, perhaps in part because of the above policy concerns.

Musical Instruments

May musical instruments be installed or even utilized on a temporary basis, such as for banquets which may be held on shul premises?

Rav Weinberg⁶³ urges that no music be played in a shul. First of all, there is the issue of חוקות העכו"ם, imitating Gentile customs; musical instruments play a major role in non-Jewish religious services. In addition, the introduction of the organ into the synagogue by Reform Jewry has cast a pall on that practice. Furthermore, he contends that attending musical events even outside a shul is problematic, for in the aftermath of the destruction of the Temple, our Rabbis forbade musical entertainment accompanied by instruments.⁶⁴ Whatever justifica-

62. שו"ת ציץ אליעזר ח"ד סימן כ"ו.

63. שרידי אש או"ח ח"ב סימן י"ב.

64. גיטין ז. ועיין שו"ע או"ח תק"ס סעיף ג.

Page Announcements

Not frequently, it is necessary to inform worshippers of the current status of the services, to announce the exact page of a particular prayer. This practice is particularly prevalent during the High Holidays where a large audience, often unfamiliar with synagogue procedures, finds it difficult to follow the prayers without periodic reminders. In addition, individual congregations frequently choose to delete some *Piyyutim* (additional poems), and occasional pauses in the services make it difficult, even for the seasoned worshipper, to follow the prayers. Do page announcements constitute a *הפסק*, an unwarranted interruption of davening? Rav Moshe Feinstein⁷⁰, while permitting announcements during the early part of the prayer, arguing that they are pertinent, contends that to do so during the *Shema* portion poses halachic problems. After all, one may not even answer "Amen" at that juncture, let alone interrupt one's prayer for relatively extraneous page announcements. He advises that if a rabbi is compelled to keep his congregants abreast during the *Birchot Kriat Shema*, he should daven prior to going to shul.

It is also common to announce the Shofar blowing, which may constitute an "interruption" between the first blowing and the later ones. Many authorities⁷¹ rule in the negative on this practice.

Some synagogues opt to display preprinted page announcements (or attach them magnetically) on a bulletin-board like surface. While this arrangement obviates the need for countless interruption of the davening, it may be problematic on other grounds. Insertion of the appropriate sticker may constitute "writing"⁷² on the Sabbath. Likewise, its removal may be the reverse, "erasing" the writing, *מוחק*. Accordingly, such a procedure should not be introduced without halachic guidance.

Closely related to the issue of page announcements is the practice of giving running commentary on the Torah reading. In

70. אג"מ אר"ח ח"א סימן כ"ב, ועין יחזה דעת ח"ה סימן י"ז.

71. ר"מ מתוך התשובה שם ועין חלק ב סימן לו.

72. עין באר"ח סימן ש"מ ס"ק כ"ב ובשו"ת אג"מ חלק א סעיף כ"ב.

some congregations, the Rabbi presents not only a summation of the portion prior to the reading but also "updates" periodically. Rav Moshe Feinstein⁷³ disapproves of the practice as presumptuous and notes that in many instances, these comments border on the frivolous and deal with matters entirely unrelated to the reading.

Repetition of Words

The custom of *Chazanim*, while embroidering an elaborate cantorial piece, to repeat words, phrases, or even entire sentences is by no means indigenous to modern America. The *Aruch HaShulchan*⁷⁴ already bemoaned its too frequent incidence in 19th century Russia. Nonetheless, this practice has become almost the norm rather than the exception and is thus worthy of renewed consideration. Rav Feinstein⁷⁵ as well as Rav Ovadia Yosef⁷⁶ decry the practice, not only as inappropriate, but even at times as constituting an unwarranted interruption or even distortion of the text.

Use of Non-Traditional Music

Throughout history Jews have at times been affected by their milieu, and music from many different sources has filtered into the *davening*. According to tradition, many of the rhapsodic Chassidic tunes originate from Russian peasant music. May popular music be used for *davening*? Occasionally these tunes are of dubious or perhaps even unsavory origin. Authorities differ as to the appropriateness of the practice. Rav Ovadia Yosef⁷⁶ sanctions it, arguing that only the actual words borrowed from offensive songs may not be used; the melody itself poses no problem. He notes that many Sephardic tunes are actually derived from Arab melodies⁷⁷ and deduces an allusion to this practice in the Psalmist's phrase

73. אג"מ אר"ח ח"ד סימן מ ס"ק כ"א ועיין בשו"ת יחזק דעת ח"ה סימן י"ז.

74. ערוך השולחן סימן נ"ג סעיף י"ג.

75. אג"מ אר"ח ח"ב סימן כ"ב.

76. יחזק דעת ח"ב סימן ה.

77. שם.

על ערבים בתוכה תלינו כנורותינו⁷⁸ However, Rav Waldenberg⁷⁹ disagrees, maintaining that the tune as well as the lyrics must emanate from proper sources.

Changes in Ritual

While it is not unique to contemporary times, the issue of changing one's "*nusach*", switching from *nusach* Ashkenaz to *nusach* Sepharad or vice versa, has attained greater importance in America's melting pot society. Congregations and ethnic subgroups, once located in different regions of Europe, are now situated within blocks of each other. Young people, in particular, often study in Torah institutions which follow customs different from those of their parental home.

May individuals change their prayer mode, their *nusach*? Prestigious authorities agree that it may be possible, but they disagree as to the nature of such change. Rav Feinstein⁸⁰ permits switching from Sepharad to Ashkenaz, arguing that the Ashkenazi ritual is the truly authentic text for Northern European Jews. (He concedes that the founders of Chassidism altered their prayer mode, but contends nonetheless that those seeking to switch back to Ashkenaz are merely reverting to their indigenous mode and may do so without compunction). However, proponents of *nusach* Sepharad argue that their traditions are universal in nature and may be accepted by all Jews, regardless of their previous affiliation. Thus, some^{81 82 83} permit switching from Ashkenaz to Sepharad ritual, but there are variations on this theme.^{84 85}

Sometimes congregations seek to change their accustomed ritual as membership shifts. Rav Moshe Feinstein⁸⁶, consistent with

78. תהלים קל"ז.

79. שו"ת ציץ אליעזר ח"י"ד סימן י"ב.

80. אג"מ ח"ב סימן כ"ד.

81. מנחת יצחק ח"ז סימן י"ד.

82. חלקת יעקב אור"ח ח"א סימן ע"ט.

83. יחזק דעת ח"ג סימן ו.

84. שם.

85. שו"ת בית אבי ח"א סימן ט וח"ג סימן י"ד.

86. אג"מ ח"ב סימן כ"א.

his previously stated beliefs, argues against shifting from the Ashkenazi ritual, even if the current membership desires to do so. The precedent set by the founders and first trustees who set a shul's tone and ritual is binding. Other authorities, however, do permit change in the official *nusach*. In a response to pre-war Cracow (once the citadel of Ashkenazi ritual, home of the Ramo, but by then a bustling Chassidic center) Rav Breisch⁸⁷ argues that a majority vote of the contemporary membership may opt to alter the *nusach*. But it should be stressed that voting on this issue is not contingent on the individual's personal preference, but rather on the standard and ritual which he actively follows.

Not only *nusach* but also proper vocalization (*havarah*) of Hebrew, especially for *tefilla*, has been subject to demographic and psychographic shifts within the Jewish people. With the advent of the State of Israel as well as the popularization of modern Hebrew, the Sephardic way of pronouncing the words has become much in vogue. Hebrew now serves as the lingua franca of Israel and typically as the language of instruction in America's day schools.

Most authorities agree that either the Ashkenazi (European) or Sephardic (Middle Eastern) *havarah* is suitable for davening. Rav Moshe Feinstein⁸⁸ suggests that any vocalization utilized by large segments of the Jewish people is ipso facto deemed to be acceptable for prayer. Widespread usage alone suffices to make it so. He notes that those procedures which can only be performed in Hebrew (e.g., *Chalitzah*) may be done in any popular version of the language or any common Hebrew dialect. While any *havarah* may be acceptable, Rav Henkin insisted upon consistency; one may not commence davening in one *nusach* or *havarah* and then for some whimsical reason switch to another mid-service.

Young people exposed to environments different than their parental home often desire to alter their *havarah*. Most authorities frown upon this practice. Rav Kook⁹⁰, for example, argued that an

87. חלקת יעקב ח"א סימן ע"ט.

88. אג"מ או"ח ח"ג סימן ה.

89. עדות לישראל הובא בשערים המצוינים בהלכה סימן י"ח ס"ק ה.

90. הובא במקראי קודש פורים סימן י"ב.

unwarranted change of *havarah* not only violates the spirit of "אל תטוש תורת אמן" (maintaining one's unique heritage) but may also be equivalent to davening or saying the *Shema* in a corrupted, garbled manner, לא דקדק באותיותיה. Likewise, synagogues are encouraged not to tamper or precipitously change their *havarah*. Occasionally, synagogues are faced with potentially embarrassing situations where modifications in practice may be necessary on a temporary basis — for example, a Bar Mitzvah celebration in which the boy has been instructed in one *havarah* whereas the shul is accustomed to using the other form. Authorities recommend arranging a separate Torah reading for the Bar Mitzvah or, if that is not feasible, it may be permissible to read the *Maftir* differently.⁹¹ Similarly, a *chazan* in a shul using a *havarah* different from his own may temporarily change his custom.⁹²

Use of the Synagogue Premises

The modern synagogue often functions as the social fulcrum of a community, a quasi Jewish center. While the intention of creating a Jewish ambience is certainly desirable, halacha stipulates that a shul should not be used for mundane purposes.⁹³ Rav Feinstein⁹⁴ recommends that whenever possible, parties should be conducted in the adjacent social hall which is not consecrated in the same manner as the sanctuary. Certain activities may not be sanctioned by a synagogue under any circumstances, no matter what the venue. Certainly, dinner dances may not be held on synagogue premises (or anywhere) even if the alternative (or at least the threatened alternative) is the possibility of those same activities occurring under non-Jewish auspices. A Torah institution need not waver from halachic principles because of concern about what may happen elsewhere.

Concern about the holiness of the shul leads Rav Feinstein⁹⁵ to

91. אג"מ אור"ח ח"ד סימן ס"ה ועיין בשו"ת בית אבי ח"א סימן י — וח"ג סימן ב.

92. שם.

93. אור"ח סימן קנ"א סעיף א.

94. אג"מ ח"ב סימן ל.

95. שם ח"א סימן ל"א.

prohibit renting a site for davening in a place previously used for immodest activities. Typically, country clubs or halls are rented to seat the overflow crowd for the High Holidays; congregations should consider the responsa on this matter prior to embarking on such a practice. Other activities, while less inimical than social dancing, do not mesh well with a shul's *raison d'être* and should not be conducted on synagogue premises. For example, operating bingo games is wholly inappropriate in a sanctuary.⁹⁶

A synagogue's primary function is Torah study and prayer. Under no circumstances may a synagogue's premises be contracted out if doing so would disturb davening or ongoing Torah classes.⁹⁷

Though eating and drinking frivolously are prohibited in a *Beth Knesset*, a *seudat mitzva* (meal in celebration of a mitzva) may be held there, especially if no other appropriate site can be found. Most authorities adopt an expansive view of the concept "*seudat mitzva*", including therein *seuda shlishit* (the festive third meal of Shabbat) and even a Chassidic "*tisch*" or "*farbrengen*," if necessary.⁹⁸

May a Bat Mitzva celebration be held in a synagogue sanctuary? This issue pivots largely on the halachic status of a Bat Mitzva celebration. The Rav of the Bucharian sector of Jerusalem, author of *Ketzot Hashulchan*, opposed public Bat Mitzva celebrations on ideological and halachic grounds¹⁰⁰ and urged that, if anything, such festivities be held in a private setting (e.g., a girl's school or at home) and restricted to females. While agreeing that a Bat Mitzva celebration is an optional practice, Rav Feinstein permits a small Kiddush to be held on the girl's behalf in shul.¹⁰¹ Under no circumstances, however, does he permit her to address the congregation from the *Bimah*, nor does he approve a pseudo-Bar Mitzva ceremony for her.¹⁰²

96. שם ח"ד סימן לה.

97. שם ל"ז.

98. שו"ת הר צבי אורח סימן ע"ג.

99. אג"מ אורח סימן מ"ה.

100. קצות השולחן ח"ט דף י"ב.

101. אג"מ ח"א סימן ק"ד וח"ד סימן ל"ו.

Some *Poskim*¹⁰³ argue that any practice not tolerated in non-Jewish houses of worship may not be condoned in a synagogue lest it generate contempt for our religion (חלול השם). Thus Rav Breisch¹⁰⁴ opposes bringing a seeing-eye dog into a shul. However, Rav Feinstein¹⁰⁵ permits it, relying on a text in the Palestinian Talmud¹⁰⁶ allowing a donkey to be brought into a *Beth Kneset*, if no other suitable resting place be found. (Rav Breisch¹⁰⁷ retorts that the intent there was to permit the donkey *driver*, not the donkey, to enter.)

In times of economic stress and oppression, the synagogue serves not only as a center for study and prayer but also as the rallying point of an embattled Jewish community. In a responsum indicative of the suffering experienced by German Jewry already in the early years of the Hitler regime, when access to all entertainment and cultural opportunities was strictly prohibited, Rav Yechiel Yaakov Weinberg¹⁰⁸ permitted secular lectures to be held in the shul, on an emergency basis and for that time period only, relying on several mitigating factors: (a) שעת הדחק (extenuating circumstances), the unavailability of any other social outlet for German Jewry; (b) אין בהן קלות ראש, the assumption that no frivolity would occur, especially under such austere circumstances; and (c) כנסיית שבבבל על תנאי הן עשויות¹⁰⁹, the "elastic clause" stipulating that shuls in the Diaspora are built on the premise that if necessary, mundane activities will also be held there. However, he recommends that a chapter of Psalms be recited prior to the function, thus lending an air of solemnity and spirituality to the occasion. Moreover, he opposes holding concerts in a shul, no matter what the circumstances, and insists that any lecturer's credentials and G-d-fearingness be approved by the Rabbi.

102. שם

103. שו"ת חתם סופר א"ח סימן לא

104. חלקת יעקב ח"א סימן פ"ז, שערים המצוינים בהלכה סימן י"ג ס"ק ב

105. אג"מ ח"א סימן מה

106. ירושלמי מגילה פ"ד הלכה יג

107. חלקת יעקב ח"א סימן פ"ז

The rationale of "extenuating circumstances" may justify the practice of summer camps' and bungalow colonies' night activities in the prayer hall. Another mitigating factor, especially for bungalow colonies, is the presumption that the cottage used for davening was never consecrated as a *Beth Kneset* but is merely a בית שמתפללין בו, a room adapted for prayer.

One final concern of *Poskim* is the halachic status of a synagogue's "air rights". Modern developers have sought to combine profits with a sense of aesthetics and civic responsibility by building high-rise buildings above historic landmarks. Such an arrangement would often help to renovate financially strapped shuls and even at times be architecturally appealing. However, halachic constraints exist. Firstly, בונין בהכ"נ בגובה של עיר. The synagogue should, ideally, be structured at the highest point in town.¹¹⁰ However, this requirement may be waived if truly necessary. In addition the *Shulchan Aruch* prohibits תשמיש של גנאי, any inappropriate or shameful activity (and possibly any secular activity) in the attic above the shul, seemingly precluding sale of a shul's air rights. However, several mitigating circumstances may exist. According to responsa *Pe'er Hador*¹¹¹ cited in *Mishnah Brurah*¹¹², only the space above the Holy Ark is included under the prohibition. Moreover, the prohibition may apply only to an edifice originally dedicated as a shul, not to a building converted into a synagogue. In addition, a temporary lease, rather than outright sale, may be permitted.

Nonetheless, even where all the mitigating factors exist, the air space may not be used for a particularly despicable activity. It would be difficult, if not impossible, for landlords of synagogue properties to put restrictive covenants in standard leases. Thus, any sale of "air rights" is fraught with halachic problems and should

108. שרידי אש ח"ב סימן י"ב.

109. מגילה כח.

110. אר"ח קנ"א סעיף י"ב.

111. שו"ת פאר הדור סימן ע"ד.

112. קנ"א מ"ב ס"ק מ.

not be done without rabbinic counsel.¹¹³

The Synagogue and its Environment

No organism, institutional or private, is immune to change. The synagogue's pivotal role in Jewish life makes it particularly sensitive to change. Membership composition changes; often the newcomers are less observant and knowledgeable. While the mere shift of power to a non-observant majority is not in itself grounds to resign one's membership in a shul,¹¹⁴ other problems ensue. May non-Shabbat observers help create a *minyan*? A quorum of ten is necessary for sacred liturgy such as *Kaddish* or *Kedusha*;¹¹⁵ do non-observant individuals count towards the quorum? Rav Moshe Feinstein¹¹⁶ notes that the concept of ten males forming a *minyan* is derived from the ten spies who maligned the Land of Israel, which may be a reason to count even sinners in the quorum. In some instances, an additional requirement exists — the necessity that at least a majority of the quorum actually be obligated to daven (בני חיובא). The question arises whether Jews who habitually do not daven are considered בני חיובא. Finally, is the contemporary uncommitted Jew, who may never have been taught about his religion, identical with the flagrant Sabbath desecrator mentioned in halachic literature? Many authorities cite Rav Yaakov Ettlinger's¹¹⁷ opinion that the non-observant Jew who nonetheless *davens*, recites *Kiddush*, and participates in religious rituals is not considered a flagrant desecrator from a halachic standpoint. Rav Feinstein¹¹⁸ concludes that if necessary one may count such people towards a *minyan*. Rav Breisch¹¹⁹ likewise is concerned about the

113. For a fuller exposition of the subject, see Rabbi J. David Bleich, *Contemporary Halachic Problems*, pp. 61-65.

114. אג"מ ח"ב סימן ס"א, ויו"ד ח"ב סימן ק.

115. ברכות כא.

116. אג"מ ח"א סימן כ"ג.

117. שו"ת בנין ציון סימן כ"ג.

118. אג"מ ח"א סימן כ"ג.

119. חלקת יעקב ח"א סימן צ"א.

policy of ostracizing Sabbath desecrators, for in reality they are potential *ba'alei teshuvah* (penitents) (כמה שנאה ונטירה יכול) (לצמח מזה). Despite the above factors, Rav Vosner¹²⁰ opposes including non-Sabbath observers as part of the requisite *minyan*.

In a related issue, Rav Feinstein¹²¹ considers the permissibility of calling Sabbath desecrators to the Torah (*aliyah*). He discourages the practice, although permitting it under urgent circumstances (a *Yahrzeit*). However, atheists and non-believers may never be called up and should not even be honored with related activities, such as lifting the Torah, barring a compelling reason.¹²² Inasmuch as the issue of Orthodox Jewry's relationship vis-a-vis its non-observant brethren is a delicate and sensitive one, involving matters of ideology as well as law, these comments should be taken as mere suggestions. Any empirical question must be determined by the local authorities.

On occasion, circumstances tempt members of Orthodox synagogues to contemplate relocating in a more attractive section. Not infrequently, the only existing structure compatible with the shul's budget is a room or suite in the existing Reform or Conservative center. May a *Beth Knesset* use such facilities? Rav Feinstein¹²³ rules against such an arrangement, even if the Orthodox *minyan* can use a separate entrance, arguing that there is still the appearance of impropriety, and expresses concern about the impact of non-Torah practices upon the Orthodox group. There is also implicit sanction of the non-Orthodox edifice, especially if funds are paid for the use of the room. On the other hand, if the main service in the synagogue follows halacha but is found wanting in a particular detail (e.g., the height of the *Mechitza*), it may then be possible to rent quarters from them. (The practice of buying and selling shuls is fraught with halachic problems; for a fuller discussion, see the article "Sale of a

120. שו"ת שבט הלוי ח"א סימן כ.

121. אג"מ אורח ח"ב סימן נא, וד"ג סימן י"ב.

123. אג"מ ח"ב סימן מ"ה.

Synagogue" by Rabbi Israel Poleyoff in Volume Three of this Journal.)

What alternatives exist to outright sale of a synagogue and its assets? In a letter to the Amsterdam congregation, Rav Waldenberg¹²⁴ sanctions erection of a small synagogue for these elderly residents of a declining area; only then should the main sanctuary be sold.

Corporate America is now in the throes of "merger mania." May synagogues merge? Rav Moshe¹²⁵ frowns upon the practice, fearing that this may some-time be a subterfuge to introduce nonsuitable artifacts, especially a microphone, by virtue of the merged congregation's large size.

To conclude this section on a more auspicious note, let us consider the reverse situation. May a church be transformed into a shul? Although many authorities, including *Mishnah Brurah*,¹²⁶ sanction the practice, Rav Feinstein¹²⁷ opposes it, although he permits using an empty lot which contains the ruins of a former church.¹²⁸ But *Mishnah Brurah* sanctions the conversion of a church into a shul only if no *Avoda Zara* (idolatry) was brought into the church.

Trustees, Membership, and Personnel Matters

A synagogue is expected to abide by halachic standards not only in its prayer ritual but also regarding its internal affairs. For example, questions of voting procedure should follow halachic guidelines. *Shulchan Aruch*¹²⁹ recognizes and sanctions a weighted voting system, whereby major decisions have to be approved not only by a majority of all eligible voters but by most of a shul's notables and large donors. However, *Tzitz Eliezer*¹³⁰ suggests that

124. ציץ אליעזר חלק י"ד סימן ח

125. אג"מ ח"ב סימן מ"ו

126. סימן קנ"ד במ"ב ס"ק מ"ה

127. אג"מ ח"א סימן מט

128. שם

129. שו"ע אור"ח סימן נ"ה סעיף כ"א

130. ציץ אליעזר ח"ב סימן כ"ד

רוב בנין (outright majority) is of greater importance than רוב מנין (weighted majority). If only one procedure can be enforced, it is sufficient to enforce decisions on a basis of a numerical majority. Authorities propose other criteria for synagogue voting protocol:

a) Members exempted from paying dues due to halachic privileges (such as Torah scholars) nonetheless retain full voting privileges.¹³¹

b) Women traditionally do not vote in synagogue elections nor serve as trustees. However, it is far preferable to appoint female officers than non-observant ones.¹³²

c) As implied above, synagogue officers must be observant Jews. Anyone known to be a deliberate Sabbath desecrator may not serve in positions of power and influence.¹³³

Likewise, a synagogue's treatment of its personnel should comply with halacha. *Chatam Sofer*¹³⁴ opines that Torah leaders obtaining a rabbinic position may assume life tenure merely by accepting the job. A rabbi's contract, according to some authorities,¹³⁵ is of indefinite duration, possibly even if his contract states a specific term. Rav Waldenberg¹³⁶ rules that no Assistant Rabbi may be introduced without the consent of the present Rabbi. Finally, he urges synagogues and *yeshivot* to adopt a pension system, arguing that halacha presupposes the right of an employee to enjoy adequate financial security even if ill or disabled.¹³⁷

Our rabbis foretold¹³⁸ that all synagogues and study halls built in the Diaspora will ultimately be relocated in Eretz Yisrael. May it be our good fortune to witness this glorious final chapter.

131. שם סימן כה

132. אג"מ יו"ד ח"ב סימן מד"מ"ה

133. שם ח"ג סימן י"א

134. הובא מ"ב סימן נ"ג ס"ק פ"ו

135. שם

136. צ"ח אליעזר ח"ג סימן כ"ט

137. שם ח"ב סימן כ"ו

138. מגילה כט.

Kol Isha

Rabbi Ben Cherney

The primary source attributing sexual quality to a female voice is a statement authored by Shmuel, quoted in the Talmud in two separate instances. The first occurs in tractate *Berachot* 24a in the context of an *Amoraic* discussion of the permissibility of reciting the *Shema* in the presence of a nude person. At its conclusion, the Gemara quotes three *Amoraic* statements concerning sexual incitement:

- 1) R. Hisda has said the leg of a woman is *erva* (a sexual incitement).
- 2) Shmuel has said the voice of a woman is *erva*.¹
- 3) R. Sheshet has said the hair of a woman is sexual incitement.

The question which arises at the outset concerns the

1. Shmuel quotes as his source the verse from Song of Songs, 2:14 *כי קולך ערב* וּמְרֹאֵךְ נָאוֹה, which alludes to the beauty of a woman's voice but not to any prohibition. The Jerusalem Talmud, tractate *Challah* chapter 2 rule 1, quotes a different source. Responding to the query as to the reason for Shmuel's prohibition, the Gemara quotes a verse from Jeremiah 3:9 *וְהָיָה מִקוֹל זִנְיָתָהּ* וְחִתְּתָהּ אֶת הָאָרֶץ. In the book of Jeremiah, the word *Kol* is written without a *סס*, meaning "lightness". The Jerusalem Talmud, however, quotes the word *Kol* with a *סס*, *קול*, meaning voice. "Through the voice of her harlotry she defiles the land."

relationship between these three concluding statements and the immediately preceding discussion of reciting the *Shema* in the presence of a person not properly clothed. Are these statements limited only to the *Shema* discussion, describing under what circumstances of "nudity" the *Shema* may not be recited? Or are they all-encompassing statements, affecting situations beyond the limited *Shema* topic, as if to say: regardless of the definition of an unclothed person with respect to recitation of *Shema*, the leg, hair and voice of a woman are always considered a sexual incitement and must be avoided, even if one is not reciting the *Shema*. The ambiguity will need to be clarified.

The second appearance of Shmuel's statement "*Kol b'isha erva*" (the voice of a woman is *erva*) is in *Kiddushin* 70a. R. Judah, having appeared before R. Nachman for adjudication of a slander charge against him, has the following exchange: R. Nachman asks, "Will you [R. Judah] send greetings to my wife, Yalta?" R. Judah responds, "[But] Shmuel has said a woman's voice is *erva*." After a short discussion of how R. Judah may be able to give greetings to Yalta in a permissible fashion, the Gemara returns to a discussion of the charges against R. Judah. In this citation of Shmuel's dictum there does not seem to be any reference to a problem peculiar to recitation to the *Shema*. It appears as a general prohibition of hearing a woman's voice. Again there is a dissenting opinion mentioned in the Gemara.

In addition a third reference to a woman's voice having sexual qualities is found in the context of a general prohibition against singing at festive meals, instituted at the time that the Sanhedrin was discontinued.² The Gemara records that R. Joseph said: "When men sing and women join in, it is licentiousness; when women sing and men answer, it is like a raging fire in flax." Rashi³

2. *Sotah* 48a

3. Rashi, *Sotah* 48a

ד"ה כאש בנעורת: לפי שהעונה מטה אוננו לשמוע את הזמר לענות אחריו ונמצאו האנשים נותנים לבם לקול הנשים וקול באשה ערוה כדכתיב: השמיעני את קולך (שה"ש פ"ב פס"ד) ומבעיר את יצרו כאש בנעורת אבל זמרי גברי ועניין נשי קצת פריצות יש דקול באשה ערוה אבל אינו מבעיר יצרו כל כך שאין המזמרים מטים אונם לקול העונים.

explains the distinction between men leading as opposed to answering: The one who leads does not pay attention to the one who is answering; therefore, even though the principle of “*Kol b’isha erva*” applies, it is not as volatile a situation if the men lead. However, if men are answering, they pay close attention to the voice of the leader (in this case the woman), so there is greater danger of sexual incitement. Rashi considers both instances — men leading or answering — as a violation of Shmuel’s dictum, albeit he does not quote Shmuel by name.⁴ Since both instances involve a violation of Shmuel’s opinion, the Gemara asks why R. Joseph bothers to distinguish between the two situations. The Gemara answers, *לבטולי האי מקמאי האי*, if both practices cannot be abolished at once, since the participants will not heed the warning, at least the situation where men are answering should receive more attention and be dealt with first.

Here, too, there is no mention of recitation of the *Shema* but only a general problem of hearing the female voice. However, in this case the voice referred to by R. Joseph is a woman’s voice singing, whereas in *Kiddushin* and *Berachot* no distinction of this kind is made. Perusal of the talmudic sources thus establishes the undisputed principle that a woman’s voice is *erva*, but leaves unclear whether a speaking or a singing voice is intended. Furthermore, we are not sure whether the voice is considered *erva* at all times or only during recitation of the *Shema*.

What Type of Voice Is Prohibited?

Based upon the test in *Kiddushin*, one may conclude that even

4. The Gemara, however, does not connect the two statements. R. Joseph’s statement could remain separate and distinct from Shmuel’s prohibition of *Kol b’isha erva*, Shmuel’s referring to *Shema* and R. Joseph’s referring to a particular problem of festive meals. The language used by R. Joseph still seems to focus on the problem of inflamed desire, rather than a prohibition making one aware of the destruction of the Temple. Based on R. Joseph, the Geonim prohibit the practice of having women entertainers at a gathering of men. (*Otzar Ha-Geonim, Sotah* section 143 pp.272-273, *Gittin* Sections 18-19 pp. 8-10, *Succah* Section 189 pp. 69-70). There seems to be no mention of Shmuel’s dictum *Kol b’isha erva* in this prohibition.

a woman's speaking voice is prohibited,⁵ and in fact some authorities apparently do ban even the speaking voice of a woman. R. Judah the Hasid in *Sefer Hasidim*⁶ argues that Shmuel's law of *Kol b'isha erva* is one of the reasons an unmarried man ought not to be a teacher of young women. As the context does not suggest that the young women will burst into song, we must conclude that Shmuel's dictum applies to the speaking voice as well.⁷ Although in Rambam's code there is no indication whether the rule applies to a spoken voice or only to a singing voice,⁸ from his responsa⁹ we may assume that he would include the spoken voice. While discussing the permissibility of listening to music, Rambam lists five possible prohibitions applicable in various circumstances when music is heard. One of these is the ban of *Kol isha*: "If the singer is a woman, there is a fifth prohibition since the sages of blessed memory have said *Kol b'isha erva* and surely (*Kal vehomer*) if she is singing."¹⁰

But Rabad¹¹ argues that the prohibited *Kol* in the Gemara is only a singing voice. He explains R. Judah's reluctance to carry greetings to R. Nachman's wife Yalta as stemming from the specific problem of exchanging warm greetings with a woman he

5. R. Benjamin Zilber, Responsa *Az Nidbaru*, vol. 9 sec. 9 p. 154, ד"ה וזנה, who cites those who adopt this strict vision of *Kol*.

6. Bologna sec. 313.

7. This broad application of the prohibition is also implied in the *Or Zarua* (Laws of *Keriat Shema* sec. 133). He argues from *reductio ad absurdum* that if the prohibition of *Kol b'isha erva* applied to the recitation of *Shema*, a woman herself would be prohibited from reciting the *Shema*! This implies that if a woman is subject to this ban then it would apply to the recitation of *Shema* as well. A recitation voice would be defined as a voice prohibited by *Kol b'isha erva*. R. Menachem Ha-Meiri (*Berachot 24a* ד"ה צריך אדם) raises this possibility as well, but concludes that a normal speaking voice is not included in the prohibition. Maharal in his commentary *Gur Aryeh*, Bereishit 18:9, discusses this issue.

8. Laws of Prohibited Relationships 21:2.

9. J. Blau, Responsa of Moses b. Maimon, *Machazikei Nirdamim*, (Jerusalem 1960), vol. 2, pp.398-400, no.224.

10. R. Jacob ben Asher, *Tur O.H.*, sec. 560, discusses some of the prohibitions.

11. Quoted in *Chidushei HaRashba*, *Berachot* 25a.

was prohibited to marry. According to him the anecdote in the Gemara never meant to prohibit a woman's conversational voice.¹² This distinction between warm greetings and conversation is repeated by many *Rishonim* and *Acharonim*. R. Eliezer of Metz¹³ also limits the prohibition to a woman's singing voice. R. Joseph Karo¹⁴ relies on this opinion as well as the *Hagahot Maimoniot*, limiting the prohibition to a woman's singing only.¹⁵ R. Joshua Falk argues that only a singing voice would be sexually stimulating, as opposed to a mere speaking voice.¹⁶ Furthermore, he introduces "regularity" (רגילות) as a factor limiting the scope of the prohibited *Kol*. If a voice is regularly heard, it would not fall within the parameters of the prohibition of *Kol b'isha ervat*.¹⁷ However, a clear definition of the factor of "regularity" and its areas of application are not presented by the *Rishonim*; consequently, it is generally not cited as a relevant factor by later authorities.¹⁸

When Does Kol B'isha Erva Apply?

We have noted the ambiguity in the primary sources as to whether or not the dictum *Kol b'isha ervat* applies only to one who

12. *Sde Chemed*, *Ma'arechet kuf klal* 42, quotes, in the name of *Succat David*, another reason why an expansive definition of *Kol* is to be rejected. He suggests that the strict application of Shmuel's law was an observance of the especially righteous only and not incumbent upon others as the halachic norm.

13. *Sefer Yereim*, brought in *Mordechai*, *Berachot*, sec.80.

14. *Bet Yosef*, O.H. no.75.

15. The word "*Kol*" in *Orach Haim* 75 is defined clearly as a singing voice; however, in *Even Ha-Ezer* 21 the term "voice of a woman" is left undefined. It may refer to more than only a singing voice.

16. *Prisha* to *Tur E.H.* chp. 21 sec. 2, as well as Shmuel ben Uri of Furth, *Bet Shmuel* to *S.A.* O.H. chp. 21 sec.4. R. Avraham Gumbiner in *Magen Avraham* to *S.A.* O.H., chp. 75 sec. 6, writes "the singing voice of a married woman is always forbidden to be heard, but her speaking voice is permitted."

17. c.f. *Responsa Divrei Yisrael* O.H. sec. 35, which deals with the permissibility of a woman reciting kaddish with a quorum.

18. "Regularity" is mentioned by several *Rishonim*: Rabiah, *Berachot* sec.76, Rabad and others, yet the Ramo is the only representative of the later authorities to quote this principle. (O.H. 75:3, "a voice to which one is accustomed is not considered *ervat*.")

is reciting the *Shema* or bans hearing a woman's voice in all circumstances. Rav Hai Gaon¹⁹ and Rabbenu Hananel²⁰ both interpret Shmuel's law as prohibiting the recitation of *Shema* while hearing a woman sing.²¹

In his code R. Asher ben Yechiel (Rosh) writes, "Shmuel said: the voice of a woman is sexually stimulating (*erva*), as it is written 'for your voice is sweet'. That is to say, it is prohibited to hear; but not for recitation of *Shema*."²² This statement may be interpreted in either of two ways:

1) Unlike R. Hai Gaon, he considers that we have reason to be more lenient during the recitation of *Shema*, since strict adherence would make recitation of the *Shema* exceedingly difficult. In all other instances, since no impediment to performing a mitzva arises, Shmuel's ruling of *Kol b'isha erva* applies.²³

2) The Rosh may actually be arguing for a stricter decision.²⁴ Hearing a woman's voice is prohibited not only while reciting the *Shema*, but also in other circumstances as well.²⁵

19. *Otzar Ha-Geonim, Berachot* Sec.102 P. 30; also quoted in *Mordechai, Berachot* sec.80.

20. *Otzar Ha-Geonim, Berachot, Perush R. Hananel* 24a p. 24, also quoted in *Rabiah, Berachot* sec.76.

21. The Rabiah also quotes the *Halachot Gedolot* as subscribing to the same opinion. However, from our editions of the *H.G.* it does not appear so, since after discussing the *erva* factors hindering recitation of the *Shema* and concluding, only then does he quote the statement of *Kol b'isha*. The Rabiah may have attributed such an opinion to *H.G.* since *Kol* is, in any event, mentioned in the laws of *Keriat Shema*. If it is a general ban it should have been dealt with elsewhere. The Rabiah's edition of the *H.G.* may also have read "וכן הלכה" after all the concluding statements dealing with the voice, hair, and leg of a woman.

22. *Berachot* chp.3 sec.37.

23. *Ma'adanei Yom Tov* of R. Yom Tov Lipman Heller (note 60 and 80 on Rosh *Ibid.*) He also suggests that those authorities who seem to prohibit recitation of *Shema* only while a woman is singing are being misinterpreted. Those authorities prohibit the recitation of *Shema* even while a woman is singing as well as in all other situations.

24. As suggested in his commentary to *Berachot*.

25. This possibility in the Rosh has not been raised by subsequent authorities. There are other *Rishonim* who seem to view *Kol b'isha* as a general ban: *Sefer*

The Rif ignores the principle *Kol b'isha ervā* in the recitation of *Shema* and also rejects this prohibition generally. He totally omits Shmuel's ruling from his codification of the law, both in *Berachot* and in *Kiddushin*. Noting this, Rabad²⁶ suggests a reason for Rif's rejection of the dictum. Since the Gemara has previously concluded²⁷ that even contact with his wife's nude body does not bar recitation of *Shema*, then certainly hearing a woman's voice would not limit it!²⁸ However, Rabad concludes by rejecting this reasoning since physical contact with one's own wife but with no visual stimulation might be less arousing than hearing a warm greeting from another woman whom he sees at the same time.

Like the Rif, Rambam omits the law of Shmuel from his enumeration of things that bar recitation of *Shema*.²⁹ Yet, in a different context,³⁰ Rambam lists activities that were prohibited by the Sages as a safeguard against immorality and among them "even to hear the voice of [a woman prohibited to him]." The Rambam then, like the Rosh, concludes that *Kol isha* applies to all situations except while reciting the *Shema*.³¹

The Maimonidean view of the impermissibility of a woman's voice links it to the fostering of an illicit relationship, not due to any characteristic of the woman's voice per se. If one is aroused by

Hasidim sec.33, *Piskei Rid*, *Or Zarua* (*Hilchot Keriat Shema* sec.133), and one opinion cited by *Sefer Eshkol* all agree on this point. The Meiri (*Berachot*) however, differs, and applies the prohibition to *Keriat Shema* only.

26. Quoted by Rashba, *Berachot* 25.

27. *Berachot* 24a.

28. The Rif does not totally reject the opinions of Shmuel cited by R. Judah in *Kiddushin* 70a. He rejects the first statement of *Kol b'isha ervā* and the third, "one may not inquire after a woman's welfare at all." Accepted, however, is the second law of Shmuel which prohibits inquiry after a married woman via a messenger. As Rashi explains (*Kiddushin* 70b שואלין ב"ד) this is a problem of intensification of the social relationship which may result. A woman's voice however is not the issue under discussion.

29. Maimonides, Code, Laws of *Keriat Shema* 3:16. R. Yaakov ben Asher, the *Ba'al HaTurim*, based upon the three authorities Rif, Rambam and Rosh, omits the ban of *Kol isha* from the laws of *Keriat Shema* (O.H. chp. 75).

30. Laws of Prohibited Relations, 21:1.

31. Also note R. Joseph Karo in *Kesef Mishna* to Maimonides' Code, Laws of *Keriat Shema* 3:16 and *Bet Yosef*, Tur O.H. chp. 75.

the woman's voice he may follow his inclinations and involve himself in a prohibited liaison. This view is borne out by the definite article "*ha*" before the word *erva*; hence we read *ha-erva*, meaning the voice of a prohibited woman. If so, it may be difficult to extend the prohibition to a woman's voice where there is no room for an illicit relationship to develop.³²

In *Bet Yoseph*³³ R. Joseph Karo quotes the Rif, Rambam, and Rosh that the prohibition does not apply during recitation of the *Shema*. Nevertheless, he concludes, one "should avoid" reciting the *Shema* when a woman is singing.³⁴ Interestingly, he rules in the *Shulchan Aruch*³⁵ that one may not listen to a woman sing while he recites the *Shema*. Additionally, he rules that a man may not hear the voice of a woman who is prohibited to him.

It is important to note that although there does not seem to be a precedent for such an all-encompassing view of the prohibition of *Kol isha*, there is no contradiction in accepting both views of the prohibition.³⁶

R. Joshua Falk in his commentary on the *Tur*³⁷ offers both interpretations of the Rambam's phrase "*Kol ha-erva*": the voice of a woman *is* *erva* or, alternately, the voice of a woman who is an *erva*. He clearly opts for the second interpretation, arguing that if the voice *per se* is an *erva* then the prohibition should apply

32. Both of these points are raised by R. Joshua Falk in his commentary to the *Tur*, *E.H.* chp. 21 sec.2. R. Joseph Karo in *Bet Yosef*, *E.H.* chp.21 ד"ה ומה שכתב quotes the Rambam without the definite article "*ha*". This reading would more easily facilitate an extension of this prohibition since there is attributed to the voice of a woman sexual characteristics.

33. *Orach Hayim*, chp. 75 ד"ה כתב הרא"ש.

34. Thus accepting the more general prohibition as well as its application to *Keriat Shema* as found in Rabiah.

35. *O.H.* chp.75:3.

36. In fact it appears that if not for the "elimination of commandments", the Rosh would agree that the prohibition applies to *Keriat Shema* as well (as explained by *Ma'adanei Yom Tov*, see note 23). The Ramo in *Darchei Moshe* on the *Tur*, *O.H.* chp. 75:2, seems to adopt an all-encompassing ban as the strict halacha, not only as what one "should avoid".

37. *Tur*, *E.H.* chp.21 sec. 2.

beyond the singular case of recitation of *Shema*, which alternative he rejects as unacceptable.

Other authorities such as R. Yoel Sirkes³⁸ retain the exemption of one's own wife from this prohibition but do apply the ban beyond the bounds of recitation of *Shema*. In fact, there does not seem to be a clear reason why these two factors should be related.³⁹ Even if this ban applies beyond *Keriat Shema*, the voice of a man's wife could still be exempt and permissible.⁴⁰

In conclusion, it appears that from the time of R. Moshe Isserles (Ramo) the authorities have adopted an all-inclusive view of Shmuel's principle. The voice of a woman singing is *erva* and forbidden during *Shema* and also at all other times. This is the final decision of the *Shulchan Aruch*.

It is worth noting that those who hold the position limiting *Kol isha* to *Keriat Shema* extend the meaning of *Keriat Shema* to any aspect of Torah study.⁴¹ This extension applies as well to Sabbath *zemirot* and all songs with verses from the Bible.^{42 43}

38. *Bayit Hadash* to *Tur*, E.H. chp. 21.

39. *Ibid.* ד"ה ואסור. See Also R. Shmuel ben Uri of Furth in *Bet Shmuel* on S.A. E.H. chp. 21 sec. 4 and the explicit formulation of R. Abraham Gumbiner in *Magen Avraham* on S.A. O.H., chp. 75 sec. 6.

40. Possibly as falling under the category of a voice regularly heard (as stated by Ramo, note 18 above).

41. *Mordechai*, *Berachot* sec. 80.

42. *Responsa Az Nidbaru* of R. Benjamin Zilber, vol. 9 sec. 59, quoting *Be'er Sheva*.

43. At this point in the discussion of *Kol b'isha erva* it may be valuable to correlate and analyze the evidence to determine the reason for and nature of this prohibition.

A. a) *Kol isha* was prohibited because it incites lewd thoughts, as indicated by these sources:

1. Rashi on *Sotah* 48a when explaining the difference between men leading a song as opposed to following a woman's lead (which was described as "raging fire in flax") comments that the voice of a woman "heats up the inclinations (desires) of a man as fire raging in flax."

2. R. Menachem Meiri (*Berachot* 24a ד"ה צריך אדם) states explicitly "a man should take care when reciting the *Shema* or praying not to turn his eyes to anything, even his wife, which will bring him to tainted thoughts."

3. The Rabad (quoted in *Hiddushei Ha-Rashba Berachot* 25, as related by

Practical Implications of Kol Isha

Although we have seen that only a singing voice is prohibited, the later *Poskim* have clarified what is considered a "singing

R. Menashe Klein, *Responsa Mishnah Halachot* Vol. 7 sec. 238) writes: "So too what R. Hisda says in the Gemara, 'the leg of a woman is arousing (*erva*)' applies even to his wife and for recitation of the *Shema*. It is not true *erva* and strictly from the Torah it is permissible but (this is *erva*) only for *Keriat Shema* because of arousing thoughts. So too that which Shmuel states *Kol b'isha erva* ... but (from) her face, hands, feet, and speaking voice ... we do not anticipate (such) thoughts since he is accustomed to them."

b) Another reason for the rabbinic prohibition of *Kol isha* is quoted as a second opinion in the Rabbah (*Berachot* 76). *Kol isha* was prohibited since it is usual to stare at a woman while she sings. This opinion assumes that staring at a woman is prohibited, as related by the Rabbah "one who stares at a woman's heel is as if he views her private area, and one who views the private area is considered as having intercourse with her." (*Shabbat* 64b, J.T. *Challah* chp. 2 law 1.) Further on this topic see *Magen Avraham* on S.A. O.H. chp. 128 sec. 35; Rambam, *Sefer Hamitzvot*, negative commandment 47; and R. Yonah, *Shaarei Teshuva*, *sha'ar* 3 sec. 62, where it seems this prohibition is *d'oraita*. Note the distinction between viewing a woman for promiscuous purposes and viewing without any such intentions (prohibited by the Sages). See *Sefer Ha-Mitzvot Ha-Katan* commandment 30.)

c) Still another reason for this prohibition may be found in the Rabad's explanation of the topic in *Kiddushin* and in *Berachot* (cited above in this note A,3). The Rabad argues that there is a specific ban against exchanging warm friendly greetings with a woman (who is an *erva* to that man) since it helps foster an illicit relationship between them. Since this prohibition is compared to and developed in tandem with the topic in *Berachot* dealing with *Kol*, we can conclude that the ban of *Kol* is a corollary of a general ban to hinder the development of illicit relationships. A man should not listen to a woman sing since a closeness between them may develop.

B. Although the reason why the Sages prohibited *Kol isha* is clear, the nature of this prohibition is still to be clarified. We may argue that the prohibition will apply where the reasons for the ban are relevant. It is formulated as a "*gezera*" lest one come to transgress the prime prohibition. (For example: riding a horse on Shabbat is prohibited since one may break a branch off a tree to use as a riding crop, which is biblically forbidden.) In the case of *Kol isha*, it is to prevent lewd thoughts, staring at woman, or an illicit relationship. Whenever hearing a woman's voice might result in these transgressions, the voice is prohibited. There is another possible formulation of this rabbinic prohibition. The voice of a woman will be considered equivalent to an uncovered part of her body, as *erva per se*. Thus, whenever the voice has

voice." The *Divrei Heifetz*, quoted by *Sde Hemed*,⁴⁴ concludes that only hearing a woman sing a love song is *assur*.⁴⁵ R. Benjamin Zilber⁴⁶ argues that any voice not usually heard by a man in casual conversation is prohibited. He derives proof for this decision from

been altered, for example as when heard through a microphone, the prohibition will no longer apply, even if the reasons for it are still relevant.

1. Such a position is presented by R. Eliezer Waldenberg in *Responsa Tzitz Eliezer* (vol. 5 sec. 2) in a discussion of the Rabiah (*Berachot* 76). After presenting the positions of R. Hai Gaon, R. Hananel and the *Halachot Gedolot*, the Rabiah formulates his own opinion: "Even though it seems [we should] be lenient in [a case] of a voice since it cannot be seen in any way, not to him nor to others, still we should be strict. "The reasoning of the Rabiah is not clear. A prohibition enacted to curb thought resulting from an activity should not be discarded since the activity is passive. The thoughts are present nonetheless. The Rabiah's formulation is more objective; the voice itself is the *erva* and must be avoided. Therefore since the voice cannot be seen it cannot be considered as *erva*, and so should not be prohibited. But in conclusion he accepts the ban.

2. R. Chaim Yosef David Azulai in his work *Petach Einayim* (*Avoda Zara* 20a) quotes an early authority who adopts this formulation in a different area of halacha. The point of discussion is a question of seeing women. This authority argues that viewing a woman is *erva* per se, no matter the intent. Although R. Azulai himself rejects the formulation even for viewing, R. Raphael Bloom (quoted by R. Menashe Klein, *Responsa Mishne Halachot*, vol. 7 sec. 238) argues that it should apply to the voice of a woman as well.

3. R. Isaac ben Moshe in *Or Zarua*, Laws of *Keriat Shema*, sec. 133, formulates an argument which has implications for the point now under consideration. He writes "*Kol B'isha erva* was not stated with reference to *Keriat Shema*, since a woman herself recites the *Shema*." The *Or Zarua* wants to show that the ban of *kol isha* does not apply to *Keriat Shema* by the *reductio ad absurdum* that the ban would prohibit a woman from reciting the *Shema* herself since she is listening to her own voice. If the ban applied only where the reasons for it applied, this argument would be faulty. Since a woman is not affected by her voice she is certainly permitted to recite the *Shema*, although the ban may apply to a man reciting the *Shema* while a woman is singing. Yet he argues that just as women may not make a blessing while nude (even though she is unaffected by the sight) so too she may not recite the *Shema* herself as she will be listening to her voice. He is assuming that the voice of a woman is *erva* per se.

44. *Ma'arechet Kuf*, rule 42.

45. This distinction assumes that the prohibition of *Kol isha* is due to the thoughts conjured up by the man.

46. *Responsa Az Nidbaru*, Vol. 3; Sec. 71.

a discrepancy between the phrases used by R. Joseph Karo in his two citations of the topic in the *Shulchan Aruch*. In *Orach Hayim*⁴⁷ (chap. 75; sec. 3) he states that any *singing* voice is prohibited. However, when not reciting the *Shema*, as discussed in *Even Haezer*, he rules that any unusual voice is *assur*. Thus, hearing a woman lecture is prohibited by him, but during *Keriat Shema* only a true singing voice is proscribed.

The earliest authority to distinguish between a voice heard while the woman is in sight as opposed to when she is not seen is R. Moshe Schick.⁴⁸ He argues that the Gemara⁴⁹ (*Sanhedrin* 45a and *Sotah* 8a) states that sexual desire is aroused by vocal stimuli only when accompanied by visual perception. However, Tosafot cite *Megilla* 15a, which records that the mere mention of Rahav's name⁵⁰ was enough to entice, even without visual stimulation. They resolve the apparent conflict by concluding that vocal stimuli alone will not foster lewd thought unless the man is acquainted with the woman. Therefore listening to a female vocalist is forbidden only when the listener can see or is acquainted with her.⁵¹ R. Ovadia Yosef agrees with this conclusion⁵² but adds that if a woman is known to a man through photographs, she is considered an acquaintance.

There is disagreement about the original intent of R. Moshe Schick's distinction, upon which the ruling noted above is based. Some maintain⁵³ that the lenient ruling applies only to "warm greetings" but not to a singing voice, for a singing voice brings sexual arousal even if unaccompanied by visual stimulation. Based on this argument, R. Benjamin Zilber, R. Wosner, and R. Yaakov

47. *Orach Hayim*, chap. 75; sec. 3.

48. Responsa Maharam Schick, E.H., Sec. 53.

49. *Sanhedrin* 45a and *Sotah* 8a.

50. A famous courtesan, Joshua 2:1-22.

51. So rules R. Judah Zirelson, Responsa *Ma'archei Lev*, sec. 5, also see Responsa *Bet Shearim*, O.H., sec. 33.

52. Responsa *Yabia Omer* Vol. 1, O.H., sec. 6.

53. *Shevet ha-Levi*, Vol. 3, E.H., sec. 181. *Az Nidbaru*, Vol. 9, Sec. 59. *Tzitz Eliezer*, Vol. 5, Sec. 5.

Breisch⁵⁴ prohibit listening to a female vocalist on a radio or recording. But R. Menashe Klein⁵⁵ concludes that this does not fall within the parameters of the prohibition of *Kol isha* since the sounds emanating from these devices are not voices but mechanical reproductions. Nonetheless, R. Klein describes such a practice as distasteful (מכוער).⁵⁶

R. Yechiel Ya'akov Weinberg⁵⁷ was asked by the leaders of a Jewish youth organization in France whether it was permissible for them to sponsor programs which involve boys and girls singing together. R. Weinberg relates his surprise at discovering that in observant homes in Germany husbands and wives sang Sabbath songs together even when guests were present. He reports that subsequently he learned that R. Samson Raphael Hirsch and R. Ezriel Hildesheimer had permitted the practice, and he quotes also from *Sde Hemed*,⁵⁸ a Sephardic authority, who sanctioned the custom.⁵⁹

In addition he cites *Sefer Ha-eshkol*⁶⁰ to the affect that listening to a woman sing is prohibited only when one derives pleasure from the song. R. Weinberg then argues that in the case of sacred songs one is not intent upon deriving such pleasure. Rather, the words of the song lead the heart to heaven; hence, there should be no prohibition. His position is bolstered by the opinions of Rosh, Rambam, and *Tur* who submit that this prohibition does not apply to *Keriat Shema* and the like. Recognizing the success of youth organizations in winning the heart and the minds of those who would be lost to Torah, R. Weinberg encourages such programs,⁶¹ but R. Benjamin Zilber

54. *Helkat Ya'akov*, Vol. 1, Sec. 163.

55. *Mishne Halachot*, vol. 5, Sec. 224.

56. c.f. *Bet Shearim O.H.*, Sec.33; *Yabia Omer*, Vol. 1, O.H., Sec. 6.

57. *Sridei Aish*, vol. 2, sec. 8.

58. *Ma'arechet Kol*

59. A proof derived from the Song of Deborah, sung by Deborah together with Barak, is rejected by R. Weinberg as well as R. Benjamin Zilber since it may have been mandated by heaven.

60. *Hilchot Tefila* Sec. 4 (our editions: sec. 7).

61. R. Weinberg points out that only the Sages may determine when to apply the

disallows mixed singing of *zemirot* since a man may not recite biblical verses while hearing a woman sing.⁶²

The *Chatan Sofer*⁶³ allows men to listen to the singing of a mixed chorus. His ruling is based upon the principle "two voices cannot be heard" (when two voices are heard simultaneously, even when reciting the same text, neither is heard clearly). But R. Benjamin Zilber and the *Be'er Yehudah* reject this opinion.⁶⁴ The lenient view of *Chatan Sofer* seems to ignore the implication of a text in *Sotah* 48 wherein the Gemara describes a situation of several women singing and men answering as a violation of *Kol isha*.⁶⁵ For this and other reasons, his ruling is challenged.⁶⁶

In addition to clarifying the term "*Kol*" for the purposes of normative halacha, the rabbis have also sought to specify just whose voice is included in the phrase *Kol b'isha erva*.

The Rambam⁶⁷ has indicated that the prohibition of *Kol isha* applies to the voice of an *erva*. Many authorities explain *erva* as

principle עת לעשות לה' הפירו תורתך, yet in this case since there may not be prohibition at all, we may impose it.

62. See also *Kuntres Be'er Mayim Hayim* Sec. 3. and others cited in *Otzar ha-Poskim* E.H. 21:1 sec. 20:3.

63. O.H. *Avodat ha-Yom, Sha'ar Taharat Yadayim*, sec. 14.

64. R. Zilber in *Az Nidbaru* vol. 9, sec. 59; *Be'er Yehudah* cited in *Otzar ha-Poskim* E.H. 21:1 sec. 20:4, as well as *Chatam Sofer Choshen Mishpat* no. 190.

65. *Be'er Sheva* also rejects this approach but does not give his reasoning.

66. Basing his opinion on Rashi to *Rosh Hashanah* 27a, ר"ה עשרה קוראין *Be'er Yehudah* on *Sefer Hareidim*, Ch. 3 of negative commandments, maintains that it is impossible for the readers to synchronize their words; therefore, the song of the women will surely be audible.

This seems to be at odds with the opinion of R. Yaffe-Schlesinger in the Adar-Nissan issue of *Ma'ayan HaTorah*, who argues that brief encounters with a woman's singing voice are not prohibited. He notes that one of the reasons suggested by Tosafot why it is permissible for the Cohen to come in contact with a *Sotah* while she brings her sacrifice is that the contact last a very short time. He suggests that this is the criterion in all such areas, and applies to the issue of *Kol b'isha erva*.

In *Bayit Hadash* to *Tur O.H.* 690, Rabbi Joel Sirkes explains that the rule of "two voices are not heard" means that they are not perceived distinctly, not that they are not heard at all.

67. *Laws of Prohibited Relations*, 21:2.

referring to any woman who may not live with that man. The voice of a married woman or any other ineligible woman falls into this category. *Bet Shmuel*⁶⁸ comments that a man may listen to his wife sing (except while he is praying) even when she is a *niddah*. *Pitchei Teshuva*⁶⁹ raises the *issur* without reaching a decision, but R. Ovadiah Yosef⁷⁰ agrees that a man may hear his wife singing even while she is a *niddah*, if he is not involved in prayer and the like. Nevertheless one who is careful in this area "will be blessed" (חבא עליו ברכה); R. Moshe Feinstein⁷¹ also rules that one should conduct himself according to the strict opinion.⁷²

Since there seems to be no difference between the voice of a married or unmarried woman in the capacity to arouse sexually, both should be equally prohibited. This is the conclusion of *Be'er Sheva*,⁷³ but R. Moshe Feinstein points out that his opinion is not accepted.⁷⁴ Others⁷⁵ also reject the reasoning of the *Be'er Sheva* since these are instances where halacha does distinguish between a married or unmarried woman. For example, married women are required to cover their hair while unmarried women are not.⁷⁶ However, if the single woman is a *niddah*, most *poskim* do include her in the voice prohibition.⁷⁷ And since today unmarried women do not customarily immerse in the mikvah, they are presumed to be *niddot*.⁷⁸ However, R. Moshe Feinstein precludes the likelihood

68. E.H., Ch. 21, sec. 4.

69. Y.D., Ch. 195.

70. Responsa Yabia Omer, vol. 4, Y.D. sec. 15.

71. Iggerot Moshe, Yoreh Deah, vol. 2, sec. 75.

72. R. Weiss in Responsa Minchat Yitzchak, vol. 7, sec. 70, examines the issue in a case where the voice is heard from a record or tape.

73. Kuntres Mayim Hayim, sec. 3.

74. Iggerot Moshe, Orach Hayim, sec. 26.

75. Apei Zutri, E.H. ch. 21, sec. 8.

76. So rules Perisha, E.H. ch. 21, sec. 4, quoting Maharshal, *Bet Shmuel* to E.H. ch. 21, sec. 4, and *Pri Migadim* to O.H., *Mishbetzot Zahav* end of ch. 75. Based on the formulation of the Rambam (which seems to prohibit hearing the voice of any woman prohibited at that time) the voice of a single woman would also be banned, since living with a woman without marriage is prohibited in the negative commandment of *Kedeisha*. (*Magid Mishna* to Rambam, *Ishut* 1:4).

77. Responsa Chatam Sofer, Choshen Mishpat, sec. 190. *Rivash*, sec. 425.

78. *Mishnah Brurah* ch. 75 sec. 17; *Iggerot Moshe* O.H. sec. 26;

of one's being aroused by the voice of a young girl less than eleven years old. But he insists that one should not be lenient for the voice of an older girl, since in these matters one who is strict is called holy (קדוש יאמרו לו).

Another issue raised by halachic inquiry is the permissibility of hearing the voice of a Gentile woman. Since a Jewish man may not marry or have relations with a Gentile woman, she is in the category of an *erva*.⁷⁹

The Mordechai points out that if we were to be as strict as we should be in this case, the result would be great *Bitul Torah* (wasted time which could have been spent in Torah study), and therefore we may be lenient.⁸⁰ Additionally, since we are accustomed to their voices, the prohibition need not apply in full severity. These factors are also mentioned by many later *Poskim* as justification for being lenient.⁸¹

In *Sotah* 22a R. Yochanan teaches:

We learn the fear of sin from a young woman....
Master of the Universe! You have created a reward
[the Garden of Eden] and created a punishment
[Gehinnom]; You have created the righteous and You
have created the wicked. May it be Your will that no
person should stumble on my account.

The Gemara implies that a woman bears some responsibility for the effect she might have upon others. The introduction to R. Yochanan's prayer does not seem to refer to any specific transgression but rather to the general prohibition of enticing others to sin.⁸² *Otzar Ha-poskim* in the name of *Yaffeh Laleiv*

79. *Avoda Zara* 37b; *Shulchan Aruch*, E.H. ch. 16, sec. 1-2; c.f. *Bet Shmuel* and *Helkat Mehokeik*. Also *Pri Megadim* quoted by *Mishnah Brurah* ch. 75 sec. 17; "Certainly for a Cohen who is prohibited from living with a Gentile woman by the *issur* of *zona*, so too a Yisrael is prohibited...She is one of the forbidden relationships." R. Moshe Feinstein rules this way also, in *Iggerot Moshe*, O.H. vol. 4 sec. 15, pt. 2.

80. *Berachot*, sec. 80. He quotes R. Hai Gaon and *Halachot Gedolot*.

81. *Chayei Adam* rule 4, sec. 6; *Mishnah Brurah* Ch. 75, sec. 17.

82. *Pesachim* 22b; R. Ovadia Yosef, *Responsa Yechave Da'at* vol. 3 sec. 67 deals

notes that women should be careful about their behavior in this as well as in other areas.⁸³

If we assume that the prohibition of listening to a women's voice was enacted to prevent men from conjuring up specific thoughts, is it possible for a man to be lenient if he feels he will not be affected?

A number of times the Gemara deals with this issue. We find that R. Gidal used to instruct women about the mikvah,⁸⁴ and R. Yochanan would influence children yet unborn while gazing at their mothers.⁸⁵ When asked if he was not afraid that his inclinations might get the better of him, R. Gidal replied, "They appear to me as white geese." A similar episode is related in *Ketubot* 17a about R. Acha who danced with the bride at a wedding since she was to him "as a beam of wood." The Gemara⁸⁶ further tells about R. Acha ben Abba who visited R. Hisda and let his married granddaughter sit on his lap, relying on Shmuel's dictum that "When one's intentions are for the sake of heaven," it is permitted. In this case R. Acha applied the principle to actual contact with an *erva*, a married woman.

The Tosafists also employ this reasoning in practical cases⁸⁷ and Rabbenu Yonah is quoted as teaching that the prohibition of *Kol b'isha erva* does not apply if the listener does not pay attention.⁸⁸ However, in his commentary to the Talmud, Ritva adds an *obiter dictum*:

All is in accordance with one's fear of heaven, and so in the halacha, all depends upon the way a man recognizes himself. If he requires prohibitive fences to curb his inclinations, he should erect them and even

specifically with women dressing immodestly..

83. Vol. 9 p. 216.

84. *Berachot* 20a.

85. *Ibid.*

86. *Kiddushin* 81b-82a.

87. 82a ד"ה הכל, dealing with a different issue — the prohibition of "making use of a woman."

88. *Responsa Az Nidbaru* vol. 9 sec. 59 p. 153.

to view the colored clothing of a woman is prohibited. But if he is aware of himself and knows that his desires are subjugated, then it is permissible for him to look at and speak with a woman who is an *erva* and to exchange warm greetings with a married woman.... However only one who is thoroughly righteous and recognizes his desires may conduct himself in such a manner and not all scholars are sure of their desire. Fortunate is the one who conquers his passions and toils in Torah.⁸⁹

It seems that although the subjective factor mentioned in Shmuel's name by the Talmud is accepted, its application is not easily introduced. The practical reaction of the *Poskim* has been uneven. In *Sefer HaChinuch* the author advises his son, "one is not free to depart from the sound advice of the Sages."⁹⁰ And he admonishes, "Many have trusted in their own inclinations and have failed. At first our inclinations appear weak but they gather strength as time goes on."⁹¹ His view is that the instances where the Sages were lenient should not serve as role models since they were dealing with mitzvot, and their personalities were "as those of angels." "Their time was occupied only with Torah and mitzvot, their intentions were known to all, and they did not feel the effects of their desires for they were wholly joined to Torah and mitzvot. However, today we may not infringe upon these restrictions but must heed [them] all."

Nevertheless, we find that Shmuel's claim that it is permitted "for the sake of heaven, *הכל לשם שמים*," is quoted by later authorities. R. Moshe Isserles (Ramo)⁹² quotes Shmuel's liberal view, as stated by Tosafot. But we should note that although Ramo obviously accepts this principle, he does not quote it in the context of *Kol isha*. In our own generation, R. Ovadia Yosef has expressed the opinion that "you should not let your heart seize the argument

89. End of Tractate *Kiddushin*.

90. *Mitzvah* 188.

91. *Succah* 52a... יצר הרע בתחילה דומה לחוט.

92. *E.H.* ch. 21 sec. 5.

that nowadays, since we are accustomed to the voices of women, we need not be concerned that [the voice arouses lewd thoughts], for we may not say these things out of our own understanding if it is not mentioned in the authorities."⁹³ R. Benjamin Zilber notes also that in practice later authorities did not accept R. Yonah's lenient ruling.⁹⁴

In conclusion, we should view this prohibition of the sages as well as others of its genre as protection against a breakdown of sanctity, a measure incumbent upon us as sincerely observant Jews.⁹⁵ Rambam teaches that it is our obligation to direct ourselves to purity of soul and mind: "Just as when one immerses himself in a mikvah, there is no physical change, so too, when one directs his heart to cleanse his soul of the impurities of the mind." Although there is no physical change, a change is effected nonetheless.⁹⁶

93. Responsa *Yabia Omer* vol. 1 sec. 6.

94. *Az Nidbaru*, vol. 9 sec. 59, p. 153.

R. Zilber is following the presentation of the *Mishnah Brurah* ch. 75 sec. 17. He permits the study of Torah and prayer while gentile women are singing only because to prohibit these activities would result in their elimination. He does not base this ruling on the ability of the listener to focus his attention on his prayer. If one could concentrate on the prayer he was reciting, this would not alleviate the problem of *Kol b'isha erva*. Yet, the Maharsham in his work *Da'at Torah*, O.H. ch. 75 sec. 3, quotes R. Yonah's ruling if one can concentrate and ignore the woman singing, he may do so.

Carrying Nitroglycerin on Shabbat

Rabbi Dr. Yirmiyohu Kaganoff

The Torah's concern for the protection of life and health is axiomatic. In virtually all instances, Torah restrictions are superseded when a life-threatening emergency exists. If the situation is extenuating, but not life-threatening, then the rule of thumb is that the Torah restriction remains in force. Sometimes, however, mitigating factors allow the overriding of a rabbinic injunction because of extenuating circumstances.

A contemporary halachic question which relates to this issue is as follows: Can a person suffering from angina or other heart disease carrying his medication on Shabbat through a public thoroughfare? In case of a sudden attack the need for nitroglycerin would indeed be life threatening, and would certainly permit the procurement of such medication through any means necessary. However, there is no medical reason which compels the patient to leave his home where his medicine is kept. Is there halachic basis to allow him to carry his medication, since the possible medical emergency can be completely avoided? Granted that this would result in a great hardship by making the patient housebound on Shabbat, yet this deprivation would not constitute a life-threatening emergency and would not be grounds for overriding a Torah-proscribed Shabbat prohibition.

The halachic question is two-fold: Can carrying the medicine be considered a rabbinic violation, as opposed to a Torah

Rabbi, Young Israel of Greater Buffalo

violation, thus making it more acceptable? Is there halachic basis to permit the overriding of a rabbinic prohibition because of hardships?¹

The same principles can be applied to other medical situations. For example, the diabetic who receives insulin injection is usually medically advised to carry with him some food items containing sugar as a precaution against insulin shock; and certain asthmatics and other allergy sufferers are advised never to go anywhere without their medication available. Would these patients be allowed to carry their sugar or medicine on Shabbat in a way which would involve only a transgression of a rabbinic decree?

Most contemporary *Poskim* who address this issue base their discussion on a responsum of Rav Shmuel Engel,² dated 9 Tammuz 5679 (July 7, 1919). At the time of this question there was a government regulation in force requiring the carrying of identification papers whenever one walked outside, with serious consequences for those apprehended in violation. Rabbi Engel was asked if it would be permitted to place the identification papers under one's hat on Shabbat while walking to shul. Rabbi Engel's analysis of the halachic issues involved will clarify many of the aspects of our question.

Shabbat violations fall under two broad headings: those activities which are forbidden *min hatorah* (Torah-mandated), and those which are forbidden by rabbinic injunction, but do not qualify as *melachah* (forbidden work) according to the Torah's requirements.

1. ואם יש צד היתר מטעם דכדורי תרופה נחשבים לאיסור חצי שיעור ואין כאן איסור תורה, לענין אין לסמוך על זה דהא כ' רש"י שבת ע"ד. ד"ה וכי מותר דחצי שיעור אסור מן התורה באיסור שבת דחוי לאיצטרופי וכ"כ באור זרוע ובהגהות אשרי רפ"ח מהל' שבת וברוב אחרונים (בה"ל רס"י שי"ט ד"ה בקנן, פרמ"ג שם, מ"ל פי"ח מהל' שבת, חיי אדם כלל י"ד, בית מאיר סי' שמ"ז, ועוד) ואף דמדברי החכ"צ סי' פ"ו והשאג"א ססי' פ"א נראה דמקילים רוב ראשונים ואחרונים מחמירים. ועי' בשד"ח ח"ב דף 378 דרוב אחרונים ס"ל דאין להקל לחולה שאין בו סכנה באיסור חצי שיעור. ובאמת אף להשאג"א והחכ"צ דחצי שיעור בהלכות שבת אסור רק מדרבנן, נראה דכדורי תרופה נחשבים לשיעור שלם דהא זהו שיעור חשיבותו וגם אחשביה ע' משנה שבת צ: ועוד משניות שם דוק.

2. שו"ת מהר"ש ענגיל ח"ג סי' מ"ג.

Torah law is not violated unless the *melachah* is performed in a manner in which that activity is usually done. If the act is done in a peculiar way, such as an item being carried in a way that things are not normally carried, it constitutes a rabbinic violation but is permitted under Torah law. This deviation is called a *shinui*.³

Rabbi Engel points out that carrying identification papers in one's hat would constitute a *shinui*, thus allowing a possibility of leniency. He quotes two talmudic sources which permit *melachah* with a *shinui* on Shabbat because of extenuating — but not life-threatening — circumstances.

רבי מרינוס אומר גונח יונק חלב בשבת. מאי טעמא? יונק
מפרק כלאחר יד ובמקום צערא לא גזרו רבנן.

Rabbi Marinus said, "One who is suffering is allowed to suck milk directly from a goat on Shabbat. Why? [Is not milking an animal on Shabbat a violation of a Torah prohibition?] Sucking is considered milking in an unusual way and the rabbis permitted it because of the discomfort of the patient."⁴

3. The Mishnah mentions this principle in a few places.

"המוציא בין בימינו בין בשמאלו, בתוך חיקו, או על כתיפו חייב שכן משא בני קהת, כלאחר ידו, ברגלו, בפיו, ובמרפקו, באזנו, ובשערו, ובפונדתו, ופיה למטה בין פונדתו לחלוקו ובשפת חלוקו במנעלו בסנדלו פטור שלא הוציא כדרך המוציאין".

"One who carries either with his right or left hand, or in his arms, or on his shoulders is culpable for carrying on Shabbat, because this is the method whereby the sons of Kehot carried the Tabernacle. If he carried with the back of his hand, with his foot, with his mouth, with his elbow, with his ear, with his hair, upside down in his belt, by his collar, with his shoe or sandal, he is not culpable because he did not carry the way things are normally carried" (*Shabbat* 92a).

"One who writes using the back of his hand (by holding the pen between his fingers and having the pen rest on the back of his hand), with his foot, with his mouth, or with his elbow is not culpable" (*Shabbat* 104b).

Any time that a person performs a *melachah* in a fashion other than the way such an action would normally be done, it is considered a *shinui*. While this is not considered a Torah violation, it is rabbinically prohibited, which makes it halachically easier to be lenient.

4. כתובות ס.

Tosafot note that the leniency is allowed only if the suffering is caused by illness and not simply by thirst. The talmudic text and commentary of Tosafot are quoted as halachic decision by the *Shulchan Aruch*.⁵

There is another talmudic text with a similar conclusion:

נחום איש גליא אומר צינור שעלו בו קשקשיו ממעכן ברגלו
בצנעא בשבת ואינו חושש. מאי טעמא? מתקן כלאחר יד
הוא ובמקום פסידא לא גזרו בה רבנן.

Nachum of Gaul said, "One is allowed on Shabbat to clean a spout that has become clogged by crushing [the clogged matter] with one's foot. Why? [Is it not forbidden to perform repair work on Shabbat?] Since the repair work is done in an unusual manner, the rabbis permitted it in a case of potential damage."⁶

Based on these talmudic sources, Rabbi Engel concludes that the rabbis permitted the performance of *melachah* with a *shinui* under extenuating circumstances even though rabbinic prohibitions are not usually waived for these situations. Furthermore, he points out two other mitigating factors: According to most opinions the prohibition to carry on Shabbat in our cities (even in the usual fashion) is rabbinic because *הוזה בומן הזה* "our public areas do not constitute a public domain according to Torah law."⁷ And carrying identification papers would constitute *מלאכה* *שאינה צריכה לגופה*, a *melachah* done without any need for the result, which would also provide a reason to be lenient, as will be explained.

5. אורח חיים סי' שכ"ח סל"ג.

6. כתובות, שם.

7. See article on this subject in *Journal of Halacha and Contemporary Society* Number V. c.f. also

שו"ת בית אפרים או"ח סי' כ"ו וכ"ז, שו"ת ישועות מלכו סי' כ"ו, שו"ת מהרש"ם ח"א סי' קס"ב, שו"ת אגרות משה א"ח סי' קל"ט וק"ם, שו"ת מהר"י שטייף סי' ס"ח, חו"א הלכות עירובין סי' מ"ג, נועם א', ג', ה', ו', תורה שלמה ט"ו במילואים, הפרדס ל"ג - ט', שו"ת משנה הלכות ח"ו סי' פ"ז ופ"ח וח"ז סי' ס"ס"ב, ובקונטרס שערי הלכות י"א.

Melachah She-einah Tzrichah Le-gufah

In several places⁸ the Gemara records a dispute between Rabbi Yehudah and Rabbi Shimon whether a *melachah she-einah tzrichah le-gufah*, an action done intentionally and in the normal fashion, but without a need for the result of the action, is forbidden by the Torah or only rabbinically. For example, carrying a corpse from a private domain into a public domain would not constitute a Torah desecration of Shabbat according to Rabbi Shimon, since one's purpose is to remove the corpse from the private domain and not because he has a need for it in the public domain. Similarly, snaring or killing a predator insect or reptile would be a *melachah she-einah tzrichah le-gufah* and therefore constitutes only a rabbinic violation according to Rabbi Shimon. Since one has no need for the caught reptile, Rabbi Shimon considers the violation rabbinic. Both of these cases violate Torah prohibition according to Rabbi Yehudah, who opines that a *melachah she-einah tzrichah le-gufah* is a Torah-mandated prohibition.

Although the Rambam⁹ follows the opinion of Rabbi Yehudah, the majority of halachic authorities concur with Rabbi Shimon.¹⁰

Rabbi Engel considers carrying the identification papers in one's hat as a *melachah she-einah tzrichah le-gufah* because the carrier has no personal usage for the papers and is carrying them merely to avoid injury or loss. He compares this to the killing of the snake where the intent is to avoid injury. Although his point is arguable, as evidenced by a later responsum,¹¹ Rabbi Engel reiterates his position that this situation qualifies as a *melachah she-einah tzrichah le-gufah*.

Placing identification papers in one's hat and carrying them that way is permitted by Rabbi Engel because of the following

8. שבת י"ב, ל"א; ע"ג, ושי"מ.

9. פ"א מהל' שבת ה"ז.

10. ראב"ד שם, ובמ"מ בשם הרמב"ן ורשב"א, ועוד.

11. שו"ת מהר"ש ענגיל ח"ז סי' כ'.

mitigating reasons: 1) The Gemara permits performing *melachah* with a *shinui* under extenuating circumstances (illness or financial loss). 2) In any case, the prohibition involved, even if done in the regular manner, would involve only rabbinic prohibition, not a Torah law. This conclusion is justified either because of the principle of *melachah she-einah tzricha le-gufah* or because no Torah-mandated public domain exists today. 3) Carrying the identification papers is to be allowed only to attend the synagogue or to perform a different mitzvah.

This responsum provides us with strong halachic precedent, although certain aspects of our case differ from those of Rabbi Engel's. Firstly, whereas in Rabbi Engel's case the identification papers had no intrinsic worth to the carrier, the nitroglycerin tablets do have intrinsic value to the patient. This would render them a *melachah hatzricha le-gufah*, a *melachah* performed with interest in the result's being done, which constitutes a Torah forbidden *melachah*. Thus, one of the reasons for being lenient is cancelled.

Secondly, Rabbi Engel permitted the carrying of the identification papers only for the performance of a mitzvah. Would he have allowed a greater leniency for someone who is ill? Bearing in mind the case of Rabbi Marinus where permission is based on medical needs, could leniency be extended to allow carrying with a *shinui* even for social or other reasons?

Several later halachic works discuss the question of a patient's carrying medication with a *shinui* as a precaution against sudden attack. Rabbi Yekuti'el Y. Greenwald¹² suggests that a sugar cube be sewn into the pocket of a diabetic's coat before Shabbat so that he would not be carrying in the usual manner on Shabbat. Rabbi Greenwald bases his opinion on two sources — the law in *Shulchan Aruch*,¹³ based on the Gemara¹⁴ which allows the carrying of an amulet on Shabbat as a medicinal item, and the responsum of

12. כל בו על אבלות ח"ב דף 20.

13. אורח חיים סי' ש"א סכ"ה וכו'.

14. משנה שבת ס. ובגמ' עליה, משנה שם ס"ז. ובגמ' עליה.

Rabbi Shmuel Engel quoted above. Unfortunately, the comparison to the law of *Kameyah* (amulet) seems strained. The halacha clearly states that the *Kameyah* must be worn in the way that it is normally worn, and that it can only be worn if it is a proven remedy; under these circumstances, the *Kameyah* is considered to be like a garment. There does not seem to be a basis in these considerations to allow carrying for non-life-threatening medical need. However, Rabbi Greenwald allows the diabetic to go outside even for non-mitzvah-related activities.

Rabbi Eliezer Yehuda Waldenberg¹⁵ cites the responsum of Rabbi Greenwald, but disputes his conclusions sharply. In addition to the difficulty we have noted, he also disputes two assumptions of Rabbi Greenwald.

1. Whereas Rabbi Greenwald says that one could allow the sugar cube (or medicine tablet) to be sewn into the garment in order to carry it on Shabbat, Rabbi Waldenberg finds no halachic source to permit carrying an item in this fashion.

2. Rabbi Waldenberg writes that the only situation in which Rabbi Engel permitted the carrying with a *shinui* was when the activity would have constituted a *melachah she-einah tzrichah legufah*. This applies to carrying identification papers, where the carrier has no personal need for the papers and is carrying them only to avoid being apprehended. It does not apply to the case of medication where the patient wants the medicine available for his own use.

Rabbi Waldenberg concludes that the leniency proposed by Rabbi Engel is not applicable to our situation and that this patient would not be allowed to carry his medications outside, even when using a *shinui*. A mediating position is taken by Rabbi Yehoshua Neuwirth.¹⁶ Although he equates the situation of the person carrying identification papers to the one carrying medication, and does permit the carrying of medications with a *shinui* for the purpose of performing a mitzvah, Rabbi Neuwirth recommends

15. שו"ת ציץ אליעזר ח"יג סי' ל"ד.

16. שמירת שבת כהלכתה פ"מ ס"ז.

other specific guidelines which would reduce the violations.

In a responsum on this topic by Menashe Klein,¹⁷ wherein he concludes that a patient is allowed to carry nitroglycerin tablets with a *shinui* for the purpose of going to *shul* or for another mitzvah, he also includes two rationales: 1) There is currently no public domain according to Torah definition. 2) He considers this carrying to be a *melachah she-einah tzricha le-gufah*, a point which is certainly disputed by the other authorities quoted.

An interesting comment quoted in the name of the *Chatam Sofer* by the *Lvushei Mordechai*¹⁸ should also shed light on this issue. *Lvushei Mordechai* reports that the *Chatam Sofer* was in the habit of carrying a handkerchief tied around his wrist outside the *eruv* on Shabbat because it is considered carrying with a *shinui* and is permitted because of the need for the handkerchief. The prohibition of rabbinic origin is overridden by the need for personal dignity (*Kavod habriyot*). No stipulation is made by *Lvushei Mordechai* that the walking be done exclusively for mitzvah purpose.

One might think that the discomfort of staying home on Shabbat provides greater reason to be lenient than the concept of personal dignity, and that this responsum could therefore be utilized as a basis to allow carrying of nitroglycerin with a *shinui*. However, few later *Poskim* refer to this comment of the *Lvushei Mordechai*.¹⁹

The following conclusions can be reached:

1. There is halachic basis to permit the performance of rabbinically-prohibited activities with a *shinui* for certain extenuating circumstances.
2. Rav Shmuel Engel allowed the carrying of identification papers in one's hat to enable one to perform a mitzvah.
3. Several contemporary *Poskim* discuss this question and reach divergent conclusions.

17. שו"ת משנה הלכות ח"ז סי' ג"ו; note that Rabbi Klein broadens the definition of *Dvar Mitzvah* considerably.

18. שו"ת לבושי מרדכי סי' קל"ג.

19. It is quoted by פ"ד ס"ק י"ג לב אברהם פ"ו.

Artificial Feeding on Yom Kippur

Rabbi J. David Bleich

As is well known, virtually all biblical prohibitions are suspended in order to provide for the treatment of a patient afflicted with a life-threatening illness. Nevertheless, in accordance with the ruling of Ramo, *Orah Hayyim* 328:12, any infraction must be mitigated to the extent that it is possible to do so, provided that the health of the patient is not compromised thereby. Thus, for example, a Jew should not perform a forbidden act on Shabbat if a non-Jew can be directed to do so. Similarly, if the Jew must perform the act himself, it should be performed in an unusual manner, e.g., with the left hand rather than with the right. Since acts performed in an unusual manner are forbidden only by virtue of rabbinic decree, the severity of the infraction is thereby reduced. Certainly, when the patient's needs can be satisfied in a manner which involves no infraction of Jewish law, otherwise forbidden acts should not be performed either by the patient himself or by others on his behalf.

Eating and drinking on Yom Kippur are certainly permissible when to abstain from food and drink would endanger the life of a patient. Yet, in order to minimize the infraction, the patient is required, when possible, not to eat and drink in the usual manner, but to eat and drink minimal quantities of food and liquid over an extended period of time. In recent years, intravenous feeding and the use of nasogastric tubes have become commonplace in the

*Rosh Yeshiva, Rabbi Isaac Elchanan Theological Seminary;
Professor of Law, Benjamin N. Cardozo School of Law,
Yeshiva University*

treatment of patients who are unable to take nourishment by mouth. For at least limited periods of time the nutritional needs of any individual may be satisfied in such manner without ill effect. This has led many individuals to question whether, in light of the present availability of such forms of nutrition, patients may still be permitted to eat in a normal manner on Yom Kippur. Halachic authorities who have discussed the question of substitution of intravenous feeding on Yom Kippur for normal feeding are unanimous in their conclusion that no patient is required to avail himself of such forms of nourishment. One authority asserts that, not only is the patient not required to seek such forms of artificial feeding, but that initiation of intravenous feeding in order to obviate the need for eating on Yom Kippur, when not otherwise medically indicated, is forbidden by halacha. These authorities, however, reach a common conclusion on the basis of varied considerations.

There is no question that, insofar as forbidden foods are concerned, ingestion of such substances intravenously or through a nasogastric tube does not involve a biblical transgression. The various categories of forbidden foods are proscribed on the basis of scriptural prohibitions couched in the phrase "thou shall not eat." The definition of "eating" is the subject of a controversy between Rav Yohanan and Resh Lakish recorded by the Gemara, *Hullin* 103b. Resh Lakish maintains that such commandments prohibit any "enjoyment" of forbidden foods "by the intestines" while Rav Yohanan regards the prohibition as forbidding "enjoyment by the palate." Since Rambam, *Hilchot Ma'achalot Asurot* 14:3, rules in accordance with the opinion of Rav Yohanan, it would appear that there is no basis for assuming a biblical prohibition with regard to any foodstuff which is not swallowed by mouth. However, R. Abraham Samuel Benjamin Sofer, *Teshuvot Ketav Sofer, Orah Hayyim*, no. 117, s.v. *ve-ahar*, asserts that Rav Yohanan concedes that any act involving "enjoyment by the intestines" constitutes a form of eating; Rav Yohanan simply adds that "enjoyment by the palate," absent digestion by the intestines, also constitutes a form of "eating" and it is that point which is disputed by Resh Lakish. Thus, according to *Ketav Sofer's* analysis, ingestion of forbidden

substances in a manner such that the food is digested in the intestines, e.g., nasogastric feeding, is forbidden by both Rav Yohanan and Resh Lakish. Nevertheless, even according to this analysis, ingestion of forbidden foods in such a manner must be regarded as forbidden only by rabbinic edict rather than by virtue of biblical law. The Gemara, *Pesachim* 115b, states that one who wraps matzah in some other substance and swallows the matzah in that manner does not thereby fulfill the mitzva of eating matzah. Swallowing matzah in this manner constitutes consumption of food *she-lo ke-derech achilah*, i.e., "not in the manner of eating." In order to discharge one's obligation with regard to eating matzah or the like, the food must be consumed in a normal or usual manner. Thus, although ingestion of food in any manner may constitute "eating" so long as the intestines derive "enjoyment" therefrom, the "eating" may yet be *she-lo ke-derech achilah*. Similarly, consumption of forbidden food in an unusual manner, although rabbinically proscribed, does not constitute a violation of a biblical commandment.¹

Accordingly, when required by an ill person, ingestion of forbidden foods in such a manner, since it is only rabbinically enjoined, is ostensibly to be preferred to swallowing the same food in a normal manner. Indeed, as recorded by *Shach*, *Yoreh De'ah* 155:4, consumption of forbidden foods in an unusual manner is permitted to any ill person even though he does not suffer from a life-threatening illness.

These conclusions may, however, not appear relevant with regard to the prohibition against eating and drinking on Yom Kippur. That prohibition is not couched in a phrase admonishing "thou shalt not eat" but rather in the words "and you shall afflict your souls" (Leviticus 16:31). Indeed, the quantity of food which must be consumed on Yom Kippur in the order to incur the biblically-prescribed punishment, viz., food equal in quantity to a dried date, is greater than the olive-size measure which is the

1. Cf., however, *Mishneh le-Melech*, *Hilchot Ma'achalot Asurot* 14:2; *Mareh ha-Panim*, Palestinian Talmud, *Shevu'ot* 3:3; and *Teshuvot Maharsham*, I, no. 124.

quantity of a forbidden food which must be consumed in order to incur punishment because, even though consumption of an olive constitutes "eating," "affliction" is not mitigated by consumption of a quantity of food less than the equivalent of a dried date. It is for this reason that *Sha'agat Aryeh*, no. 76, declares that partaking of food on Yom Kippur in an unusual manner is biblically forbidden.² According to *Sha'agat Aryeh* it is negation of the "affliction" experienced in fasting, rather than "eating" *per se*, which constitutes the essence of the Yom Kippur prohibition. Similarly, *Minchat Chinuch*, no. 313; R. Moses Sofer, *Teshuvot Chatam Sofer, Orach Hayyim*, no. 127, s.v. *tu*; and *Teshuvot Ketav Sofer, Orach Hayyim*, no. 117, s.v. *ve-ahar*, maintain that partaking of food on Yom Kippur can entail no biblical violation in the absence of "enjoyment by the intestines" (*hana'at mei'av*), i.e., unless hunger is at least somewhat appeased by means of digestion.³ The rationale underlying the opinion of these authorities is that the essence of the Yom Kippur prohibition is the mitigation of "affliction" rather than the act of eating. Arguably, it would then follow that, according to these authorities, any form of nourishment which assuages hunger is forbidden on Yom Kippur.

This conclusion was, in fact, espoused by an anonymous interlocutor who consulted R. Chaim Ozer Grodzinski with regard to whether it is permissible to introduce foodstuffs into the intestines rectally without violating Yom Kippur restrictions. That anonymous writer opined that such an act was biblically forbidden upon pain of the same penalty as the swallowing of food by mouth. R. Chaim Ozer, *Teshuvot Ahi'ezer*, III, no. 61, peremptorily dismisses this contention by citing the interpretation of the verse "who fed you in the wilderness with manna...that He might afflict you" (Deuteronomy 8:16)⁴ adduced by the Gemara,

2. Cf., however, Rambam, *Hilchot Yesodei ha-Torah* 5:8; R. Jacob Ettlinger, *Binyan Zion*, no. 35; and *Teshuvot Ketav Sofer, Orach Hayyim*, no. 111.

3. This view is, however, explicitly rejected by *Teshuvot Mahrsham*, I, no. 124; R. Meir Simchah ha-Kohen of Dvinsk, *Or Sameah, Hilchot Shevitat Asor* 2:4; and R. Chaim Ozer Grodzinski, *Teshuvot Ahi'ezer*, III, no. 61.

4. Actually, apparently citing *Yoma* 74b from memory, *Ahi'ezer* quotes the earlier

Yoma 74b. On the basis of the association of "affliction" with "eating" in the verse cited, the Gemara demonstrates that the "affliction" commanded on Yom Kippur is abstention from food, rather than some other form of self-denial. Accordingly, argues *Ahi'ezer*, violation of the commandment mandating "affliction" on Yom Kippur occurs only if hunger is assuaged by "eating"; hunger that is assuaged other than by means of swallowing food in the normal manner is yet regarded as "affliction."⁵ *Ahi'ezer* also cites *Minchat Chinuch*, no. 313, who maintains that there can be no violation of the Yom Kippur prohibition other than through both "enjoyment by the intestines" and "enjoyment by the palate." *Minchat Chinuch* maintains that this is also the position of Resh Lakish with regard to the prohibition against partaking of forbidden foods. The dispute between Rav Yohanan and Resh Lakish occurs in the context of a discussion of an individual who swallows a quantity of forbidden food equivalent to half an olive, regurgitates what he has swallowed, and swallows it again. Resh Lakish asserts that the individual has derived nutritional benefit (*hana'at mei'av*) from only a half olive quantity of forbidden food and hence the individual incurs no penalty. Rav Yohanan disagrees and asserts that, since the palate has twice derived pleasure from forbidden food equal in measure to a half olive by swallowing the same half olive twice, the result is that the palate has experienced pleasure equivalent to that derived from food equal in measure to an entire olive and hence punishment is incurred. Yet, even according to Resh Lakish, no penalty is incurred unless the forbidden food is swallowed by mouth as is evidenced by the provision that if the food is encased in other substances, thereby depriving the palate of pleasure, no penalty is incurred. In a like manner, argues *Minchat Chinuch*, with regard to Yom Kippur, all maintain that a violation of the prohibition occurs only in the

verse "and He afflicted you and caused you to hunger and fed you manna" (Deuteronomy 8:3) from which the point emerges with even greater clarity. It is not at all clear why *Yoma* 74b cites Deuteronomy 8:10 rather than Deuteronomy 8:16.

5. Cf., *Teshuvot Binyan Zion*, no. 35.

presence of both "enjoyment by the intestines" and "enjoyment by the palate." Accordingly, concludes *Ahi'ezer*, even according to *Minchat Chinuch* and *Chatam Sofer*, there can be no infraction of the prohibition against eating on Yom Kippur unless food enters the stomach through the mouth. This position is also espoused by *Teshuvot Ketav Sofer*, *Orah Hayyim*, no. 117; *Teshuvot Kol Aryeh*, no. 74; and *Teshuvot Mahazeh Avraham*, no. 129.⁶

The earliest discussions of artificial forms of feeding on Yom Kippur appear to be two responsa of R. Shalom Mordechai Schwadron, *Teshuvot Maharsham*, I, nos. 123 and 124. In the first responsum *Maharsham* discusses the permissibility of introducing food "by way of the intestines" (possibly gastrogavage or, more likely, in light of the medical technology of the day^{6a} and *Maharsham's* subsequent use of the phrase "*derech matah*," introduction of food through the rectum) while in the second responsum he describes a surgical procedure involving an incision into the throat in order to permit the insertion of a feeding tube directly into the esophagus. *Maharsham* had no difficulty in issuing a permissive ruling with regard to the first query, but, as noted by R. Mordechai Ya'akov Breisch, *Teshuvot Helkat Ya'akov*, II, no. 58, he did so on the basis of an assumption which — at least insofar as current modes of artificial feeding are concerned — is at variance with medical knowledge. Citing Rashi, *Hullin* 71a, *Maharsham* declares that food "which is introduced from 'below' will never be digested" and hence "...is not in the category of food but [is] as if [it] lies in a box." *Helkat Ya'akov* observes that, quite apart from the reason advanced by *Maharsham*, such a procedure may certainly be utilized by a sick person since the process

6. See also R. Dov Berish Weidenfeld, *Teshuvot Dovev Meisharim*, III, no. 88 and additional sources cited in *Likkutei He'arot al She'elot u-Teshuvot Hatam Sofer*, *Orah Hayyim*, no 127, sec. 9.

6a. Actually, although the procedure was certainly not widely utilized during the lifetime of *Maharsham*, the first successful gastrostomy was performed in Paris in 1876. See A. Verneuil, "Observation de gastrostomie pratiquée avec succès pour un retrecissement cicatriciel infranchissable de l'oesophage," *Bulletin de l'Académie de Médecine* (Paris), XXv (1876), 1023-1038.

involves no "enjoyment by the palate" and is also an unusual manner of eating (*she-lo ke-derekh achilah*). In the second responsum, *Maharsham* himself permits feeding through an esophageal tube on the grounds that no enjoyment is experienced by the palate and the method involves an unusual form of eating. Nevertheless, *Maharsham* recommends that even though the patient is fed through an esophageal tube, he be fed in the manner prescribed for sick persons on Yom Kippur, i.e., he be fed small quantities of food over an extended period of time.⁷ *Teshuvot Yad Shalom*, no. 51, dispenses with that requirement as being unnecessary with regard to artificial feeding.

Although both *Maharsham* and *Helkat Ya'akov* advance two different reasons permitting artificial feeding, there appears to be a significant difference between those reasons in terms of their application. If the prohibition against eating on Yom Kippur applies only when there is "enjoyment by the palate" ingestion of food other than through the mouth would appear to be entirely permissible even for a healthy person. Indeed, *Ahi'ezer*, in his discussion of rectal feeding, fails to mention that such procedures are permissible only for a person who is ill. *Maharsham*, however, certainly does not grant *carte blanche* for use of such methods, perhaps because, although he disagrees, he may have understood *Chatam Sofer* as forbidding any form of nourishment which provides "enjoyment by the intestines" even though it provides no "enjoyment by the palate."⁸ *Helkat Ya'akov*, II, no. 58, also prohibits such procedures for a healthy person.⁹ If, however, the

7. *Helkat Ya'akov* sanctions the use of time-released appetite suppressants — provided they do not contain non-kosher ingredients — for reasons which are entirely unexceptionable. Even on the assumption that the pill is a food product, any mitigation of the "affliction" of hunger is forbidden, use of such medication is entirely permissible since the pill is taken before the onset of Yom Kippur. As such, the matter is analogous to the hypothetical situation of a person partaking of a sumptuous repast before the fast consisting of foods sufficiently satiating so that no hunger is experienced throughout the entire period of the fast.

8. *Maharsham* is inaccurately cited in this regard by *Helkat Ya'akov*, II, no. 83.

9. However, *Helkat Ya'akov's* position is less readily understandable since he

procedure is permitted only because it is an "unusual form of eating" such methods would be permitted only to sick persons since "unusual forms of eating" are otherwise forbidden at least by virtue of rabbinic decree and, according to *Sha'agat Aryeh*, are biblically forbidden on Yom Kippur.

Absent the statements of *Maharsham* and *Helkat Ya'akov*, it would appear to this writer that use of forbidden foods in feeding through a gastrostomy, jejunostomy or duodenostomy, in colonic feeding, hyperalimentation, intravenous feeding or the like are permissible even for a healthy person (if not for the impermissible "wounding" necessarily entailed) and that a clear distinction may be drawn between "unusual forms of eating" and such modes of artificial feeding. Forbidden foods which are rendered bitter to the taste by admixture of pungent substances, food encased in a wrapping and the like are proscribed to healthy persons by virtue of rabbinic decree because they are "unusual forms of eating", but modes of eating nonetheless. Artificial forms of feeding which bypass the oral cavity entirely are not forms of "eating" at all and there is no evidence that such forms of ingestion are included in the rabbinic decree.¹⁰ This appears to have been the position of *Maharsham's* interlocutor, as reported in responsum no. 123, who sought to permit artificial feeding on Yom Kippur even according

maintains that there can be no prohibition even according to *Hatam Sofer* in the absence of enjoyment by the palate. The opinion expressed in this responsum is also somewhat inconsistent with his position in *Helkat Ya'akov*, II, no. 83.

10. In support of his argument that Resh Lakish recognizes not only "enjoyment by the intestines" but also "enjoyment by the palate" as a *sine qua non* of the biblical prohibition, *Minhat Hinnukh* argues that Resh Lakish certainly does not quarrel with the principle that ingesting a forbidden food encased in a wrapper is not biblically forbidden. That argument, as formulated by *Minhat Hinnukh*, may be rebutted if it is recognized that Resh Lakish may view "enjoyment by the intestines" as constituting the essence of the proscribed act, but only if the pleasure comes as a result of an act of "eating," regardless of whether or not the palate derives pleasure therefrom. Biblically, ingestion of food encased in a wrapper is not a form of "eating" since it is "unusual" in nature and hence, for that reason, is not included in the biblical prohibition. Introduction of forbidden food directly into the intestines or stomach would thus be entirely permissible according to Resh Lakish because no act of "eating" whatsoever is involved.

to the opinion of *Sha'agat Aryeh* who regards "unusual forms of eating" as biblically forbidden on Yom Kippur and of R. Eliezer Waldenberg, *Tzitz Eliezer*, X, no. 25, chapter 21. However, ingestion of forbidden foods through a nasogastric tube may perhaps be deemed comparable to encasing the foodstuff in a wrapper and hence rabbinically forbidden to a healthy person. On the other hand, consumption of food encased in a wrapper may be "unusual" but a form of "eating" nonetheless because an act of swallowing is involved. If so, ingestion of food through a nasogastric tube, since it is not at all a form of "eating," would be entirely permissible.

There is, however, another consideration which augurs against artificial feeding of nutrients containing non-kosher ingredients unless required for medical reasons. Apart from any possible attendant halachic prohibitions, the Sages advise that consumption of non-kosher foodstuffs leads to *timtum ha-lev*, i.e., loss of spiritual sensitivity and development of base character traits. That effect of the consumption of non-kosher products is not at all related to any prohibition which may be associated with partaking of non-kosher foods. Ramo, *Yoreh De'ah* 81:7, advises against employment of a non-Jewish wet-nurse because the gentile woman eats non-kosher foods and hence her milk, which is the product of the food imbibed, will produce the same effect upon the child. Ramo indicates that, on the basis of the same consideration, a Jewish mother who must eat non-kosher food for medical reasons should endeavor to find another woman to nurse her child. It might well be assumed that this consideration is limited to the eating of foodstuffs which are intrinsically non-kosher. However, *Darkei Teshuvah* 81:91, understands the comments of *Shulchan Aruch ha-Rav*, *Orah Hayyim* 343:10, as stating that the selfsame consideration pertains to the eating of foods which are forbidden only at certain times, e.g., *chametz* on Passover. It would then follow that artificial ingestion of any food on Yom Kippur is spiritually and morally deleterious as well. However, *Helkat Ya'akov*, II, no. 40, notes that the connection between forbidden foods and the development of negative character traits is mystical rather than scientific in nature and hence it may be the case that

the ill effects are engendered only when forbidden foods are ingested orally.

It is, however, incontrovertible that no punishment is incurred upon utilization of intravenous feeding on Yom Kippur and indeed, as noted earlier, there is strong reason to assume that use of such a procedure is entirely permissible. Hence the question arises with regard to whether a patient who is not permitted to fast on Yom Kippur ought to avail himself of intravenous feeding. The rabbinic authorities who discuss this question offer a number of reasons in explaining why a patient is not required to do so:

1. R. Dov Berish Weidenfeld, *Teshuvot Dovev Meisharim*, III, no. 88, confesses that he is greatly perplexed with regard to this matter but advises that intravenous feeding should not be utilized because it may cause pain and distress to the patient and may prove to be hazardous to his health. This view is endorsed by R. Eliezer Waldenberg, *Tzitz Eliezer*, X, no. 25, chapter 21. Much earlier, *Maharsham*, I, no. 123, made a similar comment with regard to the form of artificial feeding which he described. *Maharsham*, however, based his reservation upon the assumption that food fed to the patient artificially is not properly digested and hence, since it does not provide proper nourishment, results in endangerment of the patient's life.

2. R. Shlomo Zalman Auerbach, in an article which appeared in the *Sivan-Tammuz* 5731 issue of *Moriah* and which was reprinted in *Torah she-be'al Peh*, volume XIV (5732), advances an intriguing thesis in the course of a lengthy discussion of limitations upon the obligation to diminish the severity of infractions when strictures of Jewish law are suspended in face of danger to life. It is Rabbi Auerbach's contention that although when two alternative courses of action are available the one involving the less severe infraction must be pursued, nevertheless, in rendering life-sustaining aid to another, one is not required to expend funds in order to devise a method involving a less severe infraction. Thus, for example, when it is necessary to transport a patient to a hospital on *Shabbat*, a Jew who has his own automobile readily available need not hire a non-Jewish taxi in

order to avoid the need to drive to drive his own car.¹¹ Nor in preserving his own life, argues Rabbi Auerbach, is an individual obliged to incur the expense entailed in a procedure which he would not seek to employ on a weekday. Rabbi Auerbach avers that it is for this reason that a patient requiring food on Yom Kippur need not avail himself of intravenous feeding, i.e., he need not incur the additional expense involved in order to avoid the prohibition against eating on Yom Kippur, since intravenous feeding is a procedure of which he would not avail himself on a weekday.

3. R. Moshe Sternbuch, *Mo'adim u-Zemanim*, I, no. 60, asserts that there is no obligation for a patient to obtain nourishment in an unnatural manner on Yom Kippur. *Mo'adim u-Zemanim* distinguishes between Ramo's ruling that forbidden acts must, when possible, be performed by a non-Jew or in an unusual manner and the question under discussion with the comments that there is never an obligation to modify the net result of the action. *Mo'adim u-Zemanim* asserts that the obligation to mitigate the severity of an infraction is limited to modification of the mode in which the act is performed. In the Shabbat situation, the net result is the same regardless of whether the act is performed by a Jew or Gentile, or whether performed by the right hand or the left. However, requiring a patient, for example, to eat bitter food instead of his regular fare would constitute a modification of the treatment of the patient since it involves an unnatural or unusual form of nutrition. The same is *a fortiori* true with regard to substitution of intravenous feeding for conventional nourishment.

Mo'adim u-Zemanim's view is contradicted by *Binyan Zion*, no. 35. *Binyan Zion* requires a patient to eat *she-lo ke derech achilah* on Yom Kippur when possible. *Binyan Zion* demonstrates that eating uncooked fowl, since the meat is soft, is a "normal" form of eating, whereas eating the raw meat of larger animals is

11. This view is challenged by R. Pinchas Epstein, the late *Rosh Bet Din* of the *Edah ha-Haredit* of Jerusalem. See this writer's *Contemporary Halakhic Problems*, I, 131.

"unnatural." Accordingly, *Binyan Zion* advises that, when medically advisable, a patient requiring meat on Yom Kippur should eat raw beef.

4. R. Moses Feinstein, *Iggerot Moshe, Orah Hayyim*, III, no. 90, rules that use of intravenous feeding in order to avoid the need for breaking the fast is not only unnecessary but is "perhaps" forbidden as well. The obligation with regard to the treatment of illness derived from the biblical verse "and he shall surely heal" (Exodus 21:20), argues *Iggerot Moshe*, requires use of medication only when designed to effect a cure, but not when designed for an extraneous purpose such as enabling a patient to fast. This argument appears, to this writer, to be a *non sequitur*. It is quite true that the verse "and he shall surely heal" does not mandate administration of medication other than for the purpose of effecting a cure. Yet it is entirely possible that the use of medicaments is independently mandated on other grounds when the alternative to their use involves a violation of biblical law. Use of medication under such circumstances would be mandated, not in order to enable the patient to fulfill the positive obligation of fasting, but on the principle that biblical prohibitions are not suspended for the purpose of saving a life when the endangered life can be saved in some other manner.

Iggerot Moshe further argues that a patient need take no measures prior to the onset of Yom Kippur in order to be able to fast on that day. As proof of this point Rabbi Feinstein points to the fact that eating on the day preceding Yom Kippur is a positive mitzvah. Absent such mitzvah, he argues, there would be no obligation to assure one's ability to fast on Yom Kippur without endangering one's life by eating prior to the fast. Hence, he concludes, a patient need not have an intravenous line inserted prior to Yom Kippur in order to be enabled to fast. This line of reasoning is subject to question in light of the talmudic dictum, *Berachot* 8b, "Whoever eats and drinks on the ninth [of Tishrei], Scripture account it to him as if he had fasted on [both] the ninth and tenth." Establishment of a mitzvah for eating on the day preceding Yom Kippur serves to assure enhanced reward, and also renders every act of food consumption a mitzvah, even if a person

would have been required to eat on that day for other reasons.

One may also question why Rabbi Feinstein ignores the fact that it is entirely possible to introduce an intravenous line on Yom Kippur itself. Although the insertion of an intravenous line may involve an act which is forbidden on Yom Kippur, that act is presumably less severe an infraction than repeated acts of eating. This omission is noted by Rabbi Feinstein in *Iggerot Moshe, Orah Hayyim*, IV, no. 101, sec. 3. Rabbi Feinstein notes that this argument was intended to apply in a situation in which the patient may eat less than a *shi'ur* at any one time, i.e., less than the minimal amount for which punishment is incurred. Repeated acts of eating small quantities of food even cumulatively are less serious an infraction of Yom Kippur prohibitions than the single act of wounding involved in a venipuncture. Rabbi Feinstein, however, seems to disregard the fact that the intravenous line may be inserted by a non-Jewish physician, thereby completely removing the act from the category of a biblical prohibition.

Iggerot Moshe, further argues that intravenous feeding, when not medically indicated, may actually be prohibited. *Tosafot, Baba Kamma* 85a, remarks that were it not for an explicit biblical verse permitting all forms of healing, it would be forbidden to treat physiological maladies of spontaneous origin. Since such illness is brought upon man by providence, absent divine license to do so, human intervention in the form of medical therapy "would appear to thwart the decree of the King." Accordingly, it may be the case, argues *Iggerot Moshe*, that the Torah permits the use of medicine even though such use does indeed "thwart the decree of the King" solely for the purpose of effecting a cure and not in order to achieve other ends. Therefore, if it is the "decree of the King" that a person not be able to fast by reason of illness, man has no dispensation to utilize unnatural means in order to thwart that decree.

Rabbi Feinstein further contends that insertion of an intravenous line, if not mandated either by medical or halachic reasons, may be forbidden as an illicit form of "wounding." That argument, however, seems open to question. Granting that insertion of an intravenous line under such circumstances does

constitute a forbidden form of wounding, that infraction is less severe in nature than violation of the prohibition against eating on Yom Kippur and hence should be preferred over the latter. Moreover, this argument is inconsistent with Rabbi Feinstein's own position as recorded in an article which appears in *Halacha u-Refu'ah*. I (Jerusalem, 5740), 323-327. Following the opinion of Rambam, *Hilchot Hovel u-Mazik* 5:1, Rabbi Feinstein there maintains that only wanton infliction of damage upon the body constitutes a forbidden form of "wounding."

Rabbi Feinstein also contends, as do *Dovev Meisharim* and *Tzitz Eli'ezer*, that intravenous feeding may in some manner be injurious to the health of the patient. In *Iggerot Moshe, Orah Hayyim*, IV, no. 101, sec. 3, he asserts that assurances of physicians that there are no ill effects are not to be relied upon. He further argues that intravenous feeding is not as satisfying to the patient as normal eating and hence should not be administered to a weakened patient unless medically required.

In an entirely different context Rabbi Feinstein, *Iggerot Moshe Yoreh De'ah*, II, no. 74, asserts that there is no obligation whatsoever to utilize unnatural means (*tachbulot*) in order to avoid violation of Shabbat restrictions. This argument is similar to that advanced by *Mo'adim u- Zemanim* and would, *mutatis mutandus*, presumably apply to the use of intravenous feeding on Yom Kippur as well.

INDEX

This is a cumulative index of all articles which have appeared in the Journal since the beginning of publication. The issues originally numbered Vol. I, No. 1; Vol. I, No. 2; Vol. II, No. 1; have been renumbered I, II, and III.

ABORTION

- Steinberg, Avraham* — Induced Abortion in Jewish Law I, 29

ADOPTION

- Schachter, Melech* — Various Aspects of Adoption ... IV, 93

ADVERTISING

- Levine, Aaron* — Advertising and Promotional Activities as Regulated by Jewish Law II, 5

ASTHMA, See MEDICAL ISSUES

BAKERY, See FOOD

BIRTH, See CHILDBIRTH

BIRTH CONTROL, See FAMILY PLANNING

BISHUL AKUM, See NON-JEWS; FOOD

BUSINESS ETHICS

- Levine, Aaron* — Advertising and Promotional Activities as Regulated by Jewish Law II, 5

- Levine, Aaron* — Inflation Issues in Jewish Law V, 25

- Stern, Joseph* — Ribit, a Halachic Anthology IV, 46

CENSUS, See ISRAEL

CHALAV YISRAEL, See FOOD

CHALLAH, See FOOD

CHAMETZ, See FOOD; PESACH

CHILDBIRTH

Poleyoff, Israel — Induced Labor V, 84

Steinberg, Avraham — Natural Childbirth: May the
Husband Attend? II, 107

CHILD CUSTODY, See FAMILY

CHODOSH, See FOOD

CHUKAT HA'AKUM, See NON-JEWS

COHEN, See KOHEN

COMMUNAL LIFE

Bleich, J. David — Parameters and Limits of
Communal Unity from the Perspective of Jewish
Law VI, 5

Poleyoff, Israel — The Sale of a Synagogue III, 19

CONFIDENTIALITY, See Also PRIVACY

Cohen, Alfred — On Maintaining a Professional
Confidence VII, 73

COUNSELING

Cohen, Alfred — On Maintaining a Professional
Confidence VII, 73

Schaffer, Sylvan — Providing and Accepting Medical
and Psychiatric Treatment VIII, 101

COURTS, See LITIGATION AND LAW

DEATH, See LITIGATION AND LAW

DINA DE MALCHUTA, See LITIGATION AND LAW; NON-
JEWS

DIVORCE, See MARRIAGE

DOCTORS, See MEDICAL ISSUES

EDUCATION

- Bleich, J. David* – Torah Education of the Mentally Retarded IV, 79
- Stern, Joseph* – Torah Education Today VII, 88
- Weinberger, Moshe* – Teaching Torah to Women IX, 19

EMERGENCY, See SHABBAT; *PIKUACH NEFESH*

ERUV, See SHABBAT

FAMILY

- Schachter, Melech* – Various Aspects of Adoption ... IV, 93
- Schaffer, Sylvan* – Child Custody: Halacha and the Secular Approach VI, 33

FAMILY PLANNING

- Ozarowski, Joseph* – Tubal Ligation and Jewish Law VII, 42
- Schachter, Hershel* – Halachic Aspects of Family Planning IV, 5
- Steinberg, Avraham* – Induced Abortion in Jewish Law I, 29

FOOD

- Bernstein, Moshe* – *Bishul Akum* VII, 67
- Cohen, Alfred* – *Chalav Yisrael* V, 92
- Cohen, Alfred* – *Chametz* After Pesach VIII, 87
- Cohen, Alfred* – *Chodosh*: Is It Applicable in America? III, 54
- Cohen Alfred* – Vegetarianism from a Jewish Perspective II, 38
- Kaganoff, Yirmiyohu* – The Contemporary Kosher Bakery and Its Halachic Issues VIII, 34

GENTILES, See NON-JEWS

HALLEL, See YOM HA'ATZMAUT

HEALTH, See MEDICAL ISSUES

INFLATION, See BUSINESS ETHICS

INTEREST, See BUSINESS ETHICS

INTERMARRIAGE

- Bleich, J. David* — The Prohibition against
Intermarriage I, 5
- Lubling, Aaron* — Conversion in Jewish Law IX, 76

ISRAEL

- Bleich, J. David* — Halahic Controversy Concerning
the Israeli Census VIII, 62
- Horwitz, David* — Visitors in Israel and *Yom Tov*
Sheni VI, 79
- Pelcovitz, Ralph* — Reciting *Hallel* on *Yom*
Ha'atzmaut VII, 5
- Ryback, Solomon* — Reciting *Hallel* on *Yom*
Ha'atzmaut VII, 19
- Schachter, Herschel* — The Mitzvah of *Yishuv Eretz*
Yisrael VIII, 14

KASHRUT, See FOOD

KITNIYOT, See FOOD; PESACH

KOHEN

- Rosner, Fred* — Kohanim Studying and Practicing
Medicine VIII, 48

LITIGATION AND LAW

- Bleich, J. David* — A Suggested Antenuptial
Agreement VII, 25
- Bressler, Dov* — Arbitration and the Courts in Jewish
Law IX, 105
- Dick, Judah* — Halacha and Conventional Last Will
and Testament III, 5
- Krauss, Simcha* — Litigation in Secular Courts III, 35
- Krauss, Simcha* — The Sotheby's Case — A Halachic
Perspective IX, 5
- Schachter, Hershel* — *Dina de Malchuta Dina* I, 103

MARRIAGE AND DIVORCE

- Bleich, J. David* – The Prohibition Against
Intermarriage I, 5
- Bleich, J. David* – A Suggested Antenuptial
Agreement VII, 25
- Friedman, David* – The Status of non-Halachic
Marriages VIII, 118
- Schaffer, Sylvan* – Halachic Considerations in
Marriage Counseling VII, 53
- Gartner, Zvi* – Problems of a Forced Get IX, 118

MEDICAL ISSUES

- Fink, Reuven* – Halachic Aspects of Organ
Transplantation V, 45
- Lamm, Norman* – Is It a Mitzvah to Administer
Medical Therapy? VIII, 5
- Poleyoff, Israel* – Induced Labor V, 84
- Rosner, Fred* – Cigarette Smoking and Jewish Law... IV, 33
- Rosner, Fred* – Kohanim Studying and Practicing
Medicine VIII, 48
- Rosner, Fred* – The Rationing of Medical Care VI, 21
- Rosner, Fred* – Returning on the Sabbath from a
Life-Saving Mission IX, 53
- Schaffer, Sylvan* – Providing and Accepting Medical
and Psychiatric Treatment VII, 101
- Schwartz, Howard* – Medical Management of
Asthma on Shabbat VI, 47
- Spero, Moshe Halvei* – Medical Management of
Asthma on Shabbat VI, 47
- Spero, Moshe Halevi* – Violating Shabbat for Suicide
Emergency III, 72
- Steinberg, Avraham* – Induced Abortion in Jewish
Law I, 29
- Steinberg, Avraham* – Natural Childbirth – May the
Husband Attend? II, 107
- Wolfson, Wilfred* – Returning on the Sabbath from
a Life-Saving Mission IX, 53

MENTAL INCOMPETENCE

- Bleich, J. David* — Mental Incompetence and Its
Implication in Jewish Law II, 123
- Bleich, J. David* — Torah Education of the Mentally
Retarded IV, 79

NON-JEWS

- Bernstein, Moshe* — *Bishul Akum*..... VII, 67
- Bleich, J. David* — The Prohibition against
Intermarriage I, 5
- Cohen, Alfred* — *Chalav Yisrael*..... V, 92
- Friedman, David* — The Status of non-Halachic
Marriages..... VIII, 118
- Krauss, Simcha* — Litigation in Secular Courts III, 35
- Lubling, Aaron* — Conversion in Jewish Law IX, 76
- Teichman, Zvi* — The Jew in a Gentile Society —
Chukat Ha'akum..... II, 64
- Schachter, Hershel* — *Dina de Malchuta Dina* I, 103
- Schachter, Hershel* — Ethiopian Jews..... IX, 143

PANTS See WOMEN

PESACH

- Cohen, Alfred* — Chametz After Pesach..... VIII, 87
- Cohen, Alfred* — Kitniyot in Halahic Literature, Past
and Present VI, 65

PIKUACH NEFESH

- Rosner, Fred* — Cigarette Smoking and Jewish Law... IV, 33
- Rosner, Fred* — Returning on the Sabbath from a
Life-Saving Mission IX, 53
- Spero, Moshe Halevi* — Violating Sabbath for Suicide
Emergency III, 72
- Wolfson, Wilfred* — Returning on the Sabbath from
a Life-Saving Mission..... IX, 53

PRAYER

- Kasdan, Menachem* — Are Women Obligated to
Pray? II, 86

PRIVACY

- Cohen, Alfred* — On Maintaining a Professional
Confidence VII, 73
Cohen, Alfred — Privacy: A Jewish Perspective I, 53

RIBIT, See BUSINESS ETHICS

SECULAR LAW, See LITIGATION AND LAW

SHABBAT

- Bleich, J. David* — Cosmetic Powder on Sabbath IX, 68
Rosner, Fred — Returning on Sabbath from a Life-
Saving Mission IX, 53
Schachter, Hershel — The Laws of *Eruvin*: An
Overview V, 5
Schwartz, Howard J. — Medical Management of
Asthma on Shabbat VI, 5
Spero, Moshe Halevi — Medical Management of
Asthma on Shabbat VI, 5
Spero, Moshe Halevi — Violating Shabbat for Suicide
Emergency II, 72
Stern, Joseph — Opening Containers on Sabbath V, 65
Wolfson, Wilfred — Returning on Sabbath from a
Life-Saving Mission IX, 53

SHOTEH, See MENTAL INCOMPETENCE

SMOKING, See MEDICAL ISSUES

STERILIZATION, See FAMILY PLANNING

SYNAGOGUE, See COMMUNAL AFFAIRS

TRANSPLANTS, See MEDICAL ISSUES

TRIAGE, See MEDICAL ISSUES

TUBAL LIGATION, See MEDICAL ISSUES

VEGETARIANISM, See FOOD

WILLS, See LITIGATION AND LAW

WOMEN

<i>Bleich, J. David</i> — A Suggested Antenuptial Agreement		VII, 25
<i>Bleich, J. David</i> — Cosmetic Power on Sabbath		IX, 68
<i>Friedman, David</i> — May Women Wear Pants?		IV, 70
<i>Gartner, Zvi</i> — Problems of a Forced <i>Get</i>		IX, 118
<i>Kasdan, Menachem</i> — Are Women Obligated to Pray?		II, 86
<i>Poleyoff, Israel</i> — Induced Labor		V, 84
<i>Steinberg, Avraham</i> — Induced Abortion in Jewish Law		I, 29
<i>Steinberg, Avraham</i> — Natural Childbirth — May the Husband Attend		II, 107
<i>Weinberger, Moshe</i> — Teaching Torah to Women		IX, 19

YOM HA'ATZMAUT

<i>Pelcovitz, Ralph</i> — Reciting Hallel on Yom Ha'atzmaut: The Case For		VII, 5
<i>Ryback, Solomon</i> — Reciting Hallel on Yom Ha'atzmaut: The Case Against		VII, 19

YOM TOV See Also PESACH

<i>Horwitz, David</i> — Visitors in Israel and Yom Tov Sheni		VI, 79
--	--	--------