

Journal of
Halacha
and
Contemporary
Society

Number XI

Published by
Rabbi Jacob Joseph School

Journal of Halacha and Contemporary Society

Number XI
Spring 1986 / Pesach 5746

Published by
Rabbi Jacob Joseph School

Edited by
Rabbi Alfred S. Cohen

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The Ethics of Selecting a Political Candidate

Rabbi Mark Dratch

Does the halacha permit a Jew to vote for a candidate for public office who is committed to a policy that is in violation of the halacha?

While the government of the United States carefully disassociates itself from the establishment or enhancement of religious practices as mandated by the first amendment to the Constitution, many religious groups have actively involved themselves in the formulation and politics of government policies. The Black churches are hotbeds of political activity and voter registration. Fundamentalist Protestants, united as the Moral Majority, campaign for issues, support political candidates and even have the ear of the President of the United States. The Catholic Church has issued policy statements on poverty and on nuclear arms proliferation and has involved itself, in the person of New York's Archbishop O'Connor, in presidential politics. During the 1984 campaign, O'Connor stated that a Catholic should not vote for a candidate who supported policies contrary to the Church's position on abortion. These religious groups approach their civic responsibilities to the world community motivated by religious convictions.

What about Jews? Does Jewish law motivate and regulate the activities of the Jew towards the general community and towards the government in which he lives?

Rabbi, Boca Raton Synagogue, Florida

This question is easily answered as it relates to the welfare of fellow Jews. Loving one's neighbor, helping the needy, and giving charity are but a few of the fundamental responsibilities which maintain the very fabric of the Jewish community. These obligations, however, are technically, and in the first instance, limited to fellow Jews.¹ Is there a halachic imperative for the Jew to concern himself with the ethical behavior of the non-Jewish society in which he lives? Is there a halachic norm for Jews parallel to Archbishop O'Connor's prohibition for his parishioners? Can a Jew vote for a candidate who advocates an anti-halachic position?

More than just a series of volitional ethical acts and spiritual attitudes, Torah is a divinely revealed legal system of moral and religious behavior. It is the Jew's responsibility to enable the proper fulfillment of the divine will and to prevent its violation. Such prevention is articulated by the Torah through the prohibition, "Thou shalt not place a stumbling block before the blind."²

The *Sifra* there defines blindness not as a physical ailment, but rather as ignorance; and the proscription of placing a stumbling block is taken not literally but metaphorically. Thus:

"Before the blind." Should he ask you: "Is the daughter of so and so qualified to marry a Cohen?" do not answer him "Yes, she is qualified," when she is really unfit. If he comes to consult you do not give him wrong advice. Do not say to him: "Go out early," when robbers would waylay him: "Go out at noon," that he should get sunstroke. Do not say to him: "Sell your field and buy yourself a donkey," and then by a trick take it from him.

The Talmud extends the prohibition to include not only the ignorant, but also the morally obtuse — those who are aware of the

1. Most of these obligations have been extended to the non-Jewish community because of *darkhei shalom*, the rabbinic imperative to promote harmony within the community, or because of *Kiddush Hashem*, the obligation to sanctify G-d's name.

2. Leviticus 19:14. Another obligation to prevent transgression is "Thou shalt surely rebuke thy neighbor," Leviticus 19:17. This obligation, however, relates solely to fellow Jews and is not germane to the main subject of this paper.

criminal aspects of their activities. It considers our verse a prohibition of aiding and abetting those who, to quote Maimonides' summary, "have been blinded by the desires of their hearts from seeing the true path."³ Thus, the Talmud cites a *beraita* concerning two cases: that of the Nazirite — one who accepted upon himself certain restrictions such as denying himself wine or other grape products — and that of the non-Jew who, according to halacha, is subject to seven restrictions (the "seven Noachide Laws") which involve the prohibition to eat a limb torn from a living animal:

R. Nathan said: How do we know that a man should not extend a cup of wine to a Nazirite, or the limb from a live animal to a non-Jew? The Torah teaches: "Thou shalt not place a stumbling block before the blind."⁴

The Gemara then elaborates:

Now, were the [forbidden object] not held out for him, he could not take it by himself; nevertheless, the one who hands it to him is guilty of "placing a stumbling block before the blind!" Here we are dealing with the case of two persons on opposite sides of the river.

While R. Nathan extends the stumbling block prohibition to include abetting those who are aware of the illegality of their actions and are prepared to violate the law deliberately, the Gemara restricts the application of this biblical proscription to cases where infraction of the law would have been impossible without the aid of the other party. In the cases cited, the Nazirite, standing on one side of the river, could not have obtained the wine without the help of another who had the wine on the other side and, similarly, the non-Jew would have been unable to obtain the prohibited food. This "two sides of the river" restriction limits the application of the prohibition, permitting one to aid and abet another in his

3. Rambam, Laws of the Murderer, 12:14.

4. *Avodah Zarah*, 6b.

transgression if both he and the sinner are on the same side of the river, i.e., if the transgressor could have committed the violation without the accomplice's assistance, or where others were present who could have provided such service.⁵ Both Rashi and Tosafot concur with this conclusion and maintain that we are dealing with a case in which he would not have been able to take the wine if the accomplice did not hand it to him.⁶

While many "aiding and abetting" situations are excluded from the biblical "stumbling block" rule because of the Talmud's "opposite sides of the river" limitation, there are other, rabbinic, prohibitions that do apply, legislation that seeks to deter abetting transgression. Concerning the commandment to let the land lie fallow every seventh year and not to prepare or consume any produce of the Sabbatical year (*Shmitah*) the Mishnah in *Gittin* 61a states:

A woman may lend to another, who is suspected of not observing the Sabbatical year, a fan or a sieve or a handmill or a stove; but she should not grind with her.

It is not lending but grinding that presents a problem.⁷ It is not the "stumbling block" (biblical) rule that applies here, but rather the (rabbinic) prohibition of "strengthening the hands of transgressors"—*ein mechazkin yedei ovrei aveirah*. Similarly, the Mishnah prohibits one to aid another who treads upon or gleans grapes in a state of ritual impurity.⁸

5. A comparison to civil law is of interest. According to *State v. Ramsey*, Mo., 368 S.W. 2d 413, 417, "to aid and abet another to commit a crime, the defendant must in some way associate himself with the venture, must participate in it as something he wishes to bring about, and must seek by his actions to make it succeed." There is no mention of the critical role of the abettor such that without his participation the crime could never have been committed.

6. *Tosafot, Avodah Zarah*, 6b, s.v. *Minayin*. See also *Rashi*, s.v. *De'kayma bi'trei avrei de'nehara*.

7. The woman is permitted to lend the utensils because of *darkhei shalom*. It does not fall under the prohibition of "strengthening the hands of sinners" because by making the loan she is not abetting the actual act of transgression and we assume that she will use them for permissible purposes.

8. *Avodah Zarah*, 55b

A third relevant rule is the obligation *le'afrushei mei'issura*, to separate another from sin.⁹ This rule goes a step further than the prohibition of "strengthening the hands of transgressors." It requires us to prevent another from sinning. This obligation holds even on "one side of the river," when the transgressor could have accomplished his illegal ends without the intercession of the accomplice.

Differing from this literal interpretation of the Talmud's "two sides of the river" principle are Rambam and the author of *Sefer Ha'chinuch*.¹⁰ In his commentary to the Mishnah which permits, during the Sabbatical year, the sale of equipment which can be used for activities prohibited that year, Rambam explains:

You should not aid one who has been blinded by his desires and evil inclinations by adding to that blindness and by adding to his estrangement from the straight path. Because of this it is forbidden to aid a transgressor.¹¹

Rambam makes no mention of the "two sides of the river" principle, implying that the biblical prohibition of placing a stumbling block is functional even if another person is present to render aid to the transgressor. Of greater significance is that Rambam excludes this principle when he codifies the "stumbling block" prohibition in his *Mishneh Torah*:

It is forbidden to sell weapons of war to heathens. Neither may one sharpen their spears or sell them knives ...

Whatever one is forbidden to sell to a heathen he is likewise forbidden to sell to a Jewish robber because in doing so he is strengthening the hand of the sinner and causing him to sin. Similarly, if one leads astray another who is blinded in a matter by giving him bad advice, or if one encourages a transgressor who is

9. Tosafot, *Shabbat*, 3a, s.v. *Bava De'reisha* maintain that this is a rabbinic prohibition.

10. *Mitzvah* 232.

11. Commentary on the Mishnah, *She'vi'it* 5:6.

"blind" and cannot see the true path because of his heart's desires, he transgresses a negative commandment, as it is stated, "Thou shalt not place a stumbling block before the blind." Whoever comes to consult you, give him advice appropriate to his situation.¹²

The omission of the "two sides of the river" principle has already been noted by *Minchat Chinuch* in his observation that neither Rambam nor *Sefer Ha-chinuch* make mention of this requirement.¹³ *Lechem Mishneh* assumes that Rambam holds the "two sides of the river" requirement and he interprets all relevant passages accordingly.¹⁴ *Mishneh Lemelech*, however, avers that Rambam understood the principle differently. He notes, with regard to the law banning the giving or taking of interest, that both the lender and borrower violate the "stumbling block" prohibition by each causing the other to be involved in a prohibited activity, regardless of the availability of other potential lenders or borrowers. He divines the role of the aider and abettor "on the other side of the river" as that of an *integral participant* in the facilitation of the transgression — but not necessarily to the exclusion of other available accomplices. Since the specific illegal transaction under consideration necessarily requires the participation of a lender and a borrower, the "two sides of the river" requirement is fulfilled.¹⁵

This explains why Rambam does not make the witnesses to the transaction automatically culpable for placing a "stumbling block." If the witnesses are not integral participants in the unlawful loan because the parties are willing to proceed without them, the witnesses have not served as aiders and abettors to the transgression. If, however, the parties insist upon their presence, without which the loan would not take place, the witnesses would be in violation of the biblical injunction.¹⁶

12. Laws of the Murderer, 12:12, 14.

13. *Minchat Chinuch* to *Mitzvah* 232.

14. *Lechem Mishneh*, Laws of the Lender, 4:2.

15. *Mishneh Le'melech*, Laws of the Lender, 4:2.

16. The loan is valid without witnesses. They serve merely to testify to the events

Therefore, according to Rambam, providing a Nazirite with a cup of wine, even if others are in a position to hand it to him and even if he could obtain it himself, is fulfillment of the "two sides of the river" requirement and is prohibited.¹⁷

This "integral participant" principle ascribed to Rambam is actually the view of Rav Ashi expressed in the Talmud, *Nedarim* 62b:

Rav Ashi owned a forest, which he sold to a fire-temple. Said Ravina to Rav Ashi: But there is the injunction, "Thou shalt not place a stumbling block before the blind!" He replied: "Most wood is used for ordinary heating."

Ravina should never have questioned the legality of Rav Ashi's activities because certainly firewood for the idolatrous cult was available from other sources and the "two sides of the river" requirement did not obtain: the wood could have been sold without violating the "stumbling block" prohibition. Nevertheless, Ravina did invoke the injunction. He apparently maintained that Rav Ashi was an integral participant because he was the one to sell the wood to the idolators. Rav Ashi was thus forced to offer a different explanation why the prohibition did not apply.¹⁸

Rav Ashi's explanation further restricts the application of the "stumbling block" prohibition. Rav explains that because the wood was to be used for heating as well as for the pagan ritual, "it is not as if he sold the wood for idolatrous purposes and we deem that it was sold for permissible uses."¹⁹ The Mishnah in *Shevi'it* (5:6)

that occurred. In cases where the witnesses are essential for the act to take place, as in an (illicit) marriage such as a Cohen to a divorcee, the witnesses would be in violation of the "stumbling block" prohibition.

17. Similarly, a Jew who teaches Torah to a non-Jew is always in violation of the "stumbling block" prohibition according to Rambam, regardless of the availability of other teachers. Tosafot, *Chagigah*, 13a, s.v. *Ain Mosrin*, is forced to invoke Psalms 147:19, "He declares His words to Jacob, His laws and His ordinances to Israel" in order to prohibit such instruction when others are available to give lessons.

18. See *Sedei Chemmed*, Vol. 2, p. 296, quoting *Peri Chadash*, *Orach Chayyim* 196.

19. Ran to *Nedarim*, 62b.

articulates the principle that only an object whose use is limited to prohibited purposes may not be sold; whatever may be used for the prohibited as well as the permitted, may be sold. The seller is entitled to assume that the buyer will use the object in a permissible manner, and he bears no responsibility for the transgression if the objects are used illicitly.

Another limitation on the prohibition is that the aid rendered must be a *direct and immediate* "stumbling block" to the act of transgression. Placing a "stumbling block" before one who will, in turn, place a "stumbling block" before a third party is permissible. In this way, *Siftei Cohen* explains the permissibility of selling cultic objects to merchants of pagan religious supplies. The sale of such objects to the merchant is permissible because it is one degree removed from the idolator and thus is not a direct "stumbling block" to the forbidden activity.²⁰

The biblical prohibition of placing a "stumbling block" applies equally to the Jewish and non-Jewish "blind." This is obvious from the Talmud's use of the cases of the Jewish Nazirite and the non-Jewish diner as illustrations of the prohibition.²¹ The question we must address is whether the rabbinic prohibitions of "strengthening the hands of the transgressors" and "separating others from sin" include non-Jews as well. The matter is a subject of controversy among the *Rishonim*.²² The dispute is noted by Ramo in his gloss concerning the sale of religious objects to idolators:

There are those who maintain that the prohibition of selling them [Gentiles] objects related to their worship applies only if they have no other [such cultic objects], or if they are unable to purchase them elsewhere. However, if they can be acquired

20. See *Yoreh De'ah* 151 and *Siftei Cohen*, #3.

21. *Avodah Zarah*, 6b

22. According to *Siftei Cohen* there is no disagreement. He maintains that all agree that one may sell prohibited objects that are available elsewhere to non-Jews and heretics. The stringent opinion, rabbinically banning the sale of available objects, applies only to observant Jews concerning whom one has an obligation

elsewhere, any object may be sold to them. And there are those who are stringent. The custom is to be lenient in accordance with the first opinion. [However,] a religiously refined person should adopt the more severe position for himself.²³

Ramo cites the opinion of Mordechai in support of the former opinion, and that of Ran and Tosafot in support of the latter. Ran and Tosafot maintain that the sale is rabbinically prohibited. Rambam advocates an even more stringent position, considering the transaction biblically forbidden, because the merchant is an integral participant in the sale of the forbidden objects.

When the "integral participant" principle is not met, Rambam maintains that a rabbinic prohibition exists. In his *Laws of the Sabbatical Year*, 8:8, he states:

During the Sabbatical year one may strengthen the hands of the non-Jew with words alone. For example, if one saw [a non-Jew] plowing or sowing he may say to him, "Be strong," or "be successful," etc., because they were not commanded to let the land lie fallow. One may not, however, physically help him.

His statement implies that had non-Jews been forbidden to work the soil during the Sabbatical year, it would have been forbidden for Jews not only to serve as integral participants in the unlawful act, but even to give them words of encouragement.²⁴

Chatam Sofer explains that the rabbinic obligation to "separate another from sin" when the "stumbling block" prohibition is not operative applies only to Jewish subjects because of the moral and religious co-responsibility that Jews share with each other. Non-Jews, however, do not participate in this

to separate from sin. See also *Dagul Me'revavah*, s.v. *Mah she'ein kein*.

23. Ramo, *Yoreh De'ah* 151,1.

24. Similarly in *Robertson v. State*, 125 So. 60, 63 Ala. App. 267, "an aider or abettor is one who advises, counsels, procures or encourages another to commit a crime, whether he is actually present or not at the time the crime is committed."

responsibility, and a Jew is therefore not required to separate them from sin except as biblically dictated by the "stumbling block" prohibition, i.e., when the "two sides of the river" principle obtains.²⁵

Based upon *Chatam Sofer's* explanation, the differing opinions cited by Ramo can now be understood. Is the rabbinic obligation to "separate another from sin," where the biblical "stumbling block" prohibition is inoperative, a function of the principle that "Every Jew is responsible one for the other" — or is it an extension of "Thou shalt not place a stumbling block before the blind?" Those who maintain the lenient position hold that the rabbinic prohibitions are based upon Jewish co-responsibility and are, therefore, not relevant to non-Jews. Those who maintain the stringent view assert that the rabbis meant to include all those to whom the biblical injunction applies, both Jews and non-Jews.

Would a vote for a candidate who supported a position in violation of the seven Noachide laws be halachically proscribed as "placing a stumbling block before the blind?" To focus especially on the recent public issue raised in the Catholic community, may Jews vote for a candidate who explicitly favors abortion?

The Talmud, in the name of R. Ishmael, forbids foeticide for non-Jews as well as Jews. Reading Genesis 9:6 as "who sheddeth the blood of man within man, shall his blood be shed," rather than as "whoso sheddeth the blood of man, by man shall his blood be shed," R. Ishmael asks, "Who is 'a man within a man?'" and answers: "A fetus in the womb of his mother."²⁶ Rambam codifies the prohibition: "A Noachide [i.e., Gentile] who murders a person, even in the womb of its mother, is liable to capital punishment."²⁷

Whether one may vote for a candidate who supports legalized abortion can now be evaluated in light of the above discussion.

Because abortions are now legal and widely available in hospitals and clinics throughout the land, the "two sides of the river" principle, according to Rashi and Tosafot, is unfulfilled, and

25. *Chatam Sofer*, *Yoreh De'ah*, Responsum 19.

26. *Sanhedrin*, 57b.

27. *Laws of Kings*, 9:4.

the "stumbling block" prohibition is thus inoperative. One latter-day authority permits a Jewish doctor to administer abortifacient drugs to a non-Jewess when other physicians are available to perform the procedure.²⁸ Rambam, however, would forbid the doctor to administer the drugs, as he is an integral participant in the forbidden activity. According to most opinions, the biblical prohibition does not apply and, because the subjects are non-Jews, the rabbinic prohibitions are inoperative in accordance with Ramo's lenient ruling.

However, even according to Rambam and those who maintain the stringent view on the application of the rabbinic prohibitions to non-Jewish subjects, one could still vote for a pro-abortion candidate without violating the "stumbling block" prohibition. This is so because it is a second degree and not an immediate and direct placing of a "stumbling block." The act of voting is actually "placing a stumbling block" before the candidate, and it is only he who will, subsequently, place a "stumbling block" before the doctor. To vote for such a candidate is, therefore, not prohibited.

Another *Acharon* maintains that the prohibition of "placing a stumbling block" before, for example, a non-Jewish murderer, is applicable only when the Jew provides him with the actual murder weapon. Creating a situation which will in turn lead to murder, while not in violation of the "stumbling block" law, is nevertheless prohibited by the verse, "Thou shalt not place blood within thy house."²⁹ However, this applies only to Jewish subjects.³⁰ The election of a candidate, at most, only creates the possibility for abortion to be performed and it is, therefore, permitted to vote for such a non-Jewish candidate. Furthermore, the election of a Jewish candidate is proscribed by this rabbi only when *hezeikah bari*, the violation is certain to occur and in which the injunction "Thou shalt not murder," a prohibition irrelevant to our discussion, is violated.

We must yet consider another of the seven Noachide

28. See *Tiferet Adam*, quoted in *Sedei Chemmed*, Vol. 2, p. 298.

29. Deuteronomy 22:8.

30. *Sedei Chemmed*, Vo. 2, p. 297.

commandments: the obligation to establish a system of law and justice. The Talmud states:

Just as Israel was commanded to establish courts in every district and in every city, so were Noachides commanded to establish courts in every district and in every city.³¹

There is a difference of opinion as to the nature of the laws which the Torah requires these non-Jewish courts to establish and enforce. Rambam states:

What is the nature of the obligation to establish law?
They are obligated to appoint judges and policemen to enforce the other six [Noachide] commandments.³²

Ramban, in his commentary on Genesis 34:13, explains that the obligation to establish laws is not restricted to the enforcement of the other six Noachide commandments, but also includes the obligation to establish a legal system which would protect the general welfare of society in business and in interpersonal matters. Both Rambam and Ramban would agree that non-Jews are in violation of their obligation to establish laws if they pass legislation that permits abortion on demand.

We may now summarize:

Even were we to assume that a candidate ran solely on the platform of legalized abortion on demand and would therefore, if elected, potentially be in violation of the Noachide commandment to establish laws, a vote in his behalf would be permissible. The requirements of the "two sides of the river" principle are not fulfilled either because there are others voting for the candidate, electing him to office or, according to Rambam, the candidate would have been elected without the individual's vote and no one voter, therefore, is integrally necessary for the victory of the candidate. Rabbinically, however, according to those who maintain the stringent position and according to Rambam who prohibits

31. *Sanhedrin*, 56b.

32. *Laws of Kings*, 9:14.

even mere words of encouragement, such a vote would be prohibited.

Nevertheless, candidates do not run on one-issue platforms. They support many social and economic issues which conform to or enhance Jewish or Noachide law. The position of Rav Ashi who sold wood to the fire-temple because it was to be used for both permissible and prohibited purposes is most relevant. A vote for a candidate who advocates legalized abortion is also a vote for one who supports many permissible and preferred positions. One would therefore be permitted to vote for him.

In areas in which high density Jewish populations constitute large and influential voting blocks, the above contention concerning the ineffectiveness of the individual's vote may not apply. Voting as a unified community, these Jews can have an effective impact upon the results of an election. All relevant sources, however, indicate that the "stumbling block" prohibition restricts the behavior of an *individual* as he relates to others and does not apply on a communal level.

Even were we to extend the prohibition to the community *qua* community, voting for the candidate in question would not be halachically proscribed. Three other arguments obtain:

1) Because the candidate will not personally perform the objectionable activity, voting is not a direct and immediate "stumbling block."

2) The elected official will not enact the legislation by himself. He must participate in a process which involves other legislators and executives. Even the legislator himself does not fulfill the "two sides of the river" requirement and, therefore, does not violate the "stumbling block" prohibition—how much more does this pertain to the electors.

3) Candidates run on multi-issue platforms. Rav Ashi's position, allowing activity which abets combined prohibited and permitted pursuits, maintains.

While the "stumbling block" prohibition does not apply, it is pertinent to consider other mandates which obligate the community as a whole to act in a particular manner. Let us evaluate such commandments as the destruction of idolatrous cities, the

eradication of Amalek, and the appointment of a king. These communal commandments do not obligate any one individual to initiate any behavior or to act in any manner—except in response to the Sanhedrin or the King upon whom execution of the obligation falls. Rambam states in Laws of Kings 5:2 that the king “need not gain permission of the court in order to wage an obligatory war. But for an optional war, he can only conscript with the consent of the Great Court of seventy-one.” Today, there being no King and no Sanhedrin, there is no process by which to mandate such communal activity.

There are instances in which the members of a community can oblige each other to act for the welfare of that community. These instances include the collection and distribution of charitable monies, the assurance of public security, and the acquisition of religious objects.³³ The issues involved, however, are solely monetary matters and the community is so empowered because of “*hefker beit din hefker*,” the court’s authority to reassign public funds. There is, however, no authority that can prohibit Jews from halachically voting for a specific candidate, regardless of the constitution of the constituency or of the issues involved.

33. See *Baba Batra* 7b and Laws of Neighbors, chapter 6.

Animal Experimentation

Rabbi Alfred S. Cohen

For the person immersed in Torah observance and study, it is obvious that Torah is much more than a book of laws; it is the respository of divine values, ethics, and eternal truths. Thus we have to be guided not only by the strict letter of the law, but also by the spirit which imbues the mitzvot.

In his daily life, a person develops modes of interaction with those around him — family, friends, Jew, and Gentile. But it is also necessary to consider our relationship with the animal kingdom, to seek out the guidelines which will indicate to us proper and ethical attitudes towards animals. Although there are few specifics in the Torah itself concerning animals, the mitzvot that we do have unquestionably bespeak an attitude which places great importance upon treating living creatures with kindness; the rabbinic teachings in the Midrash and Talmud immeasurably reinforce this approach.

In this paper, we will be discussing the use of animals for various forms of medical and scientific, experimentation or other, non-food, use. Since the 18th century, organized efforts have been under way in America and Europe to make people more sensitive to animals' sufferings. Groups such as the Society for the Prevention of Cruelty to Animals and the National Anti-Vivisection Society have grown, their concerns ranging from the treatment of pets to protests over scientific experiments with any animal. There is no need to cite all the scriptural and rabbinic dicta

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concerning animals; however, a few selections from our literature will amply demonstrate the sensitivity for the welfare of animals which is inherent in Jewish thought.

Aside from the well-known regulations to slaughter an animal in the quickest, least painful method possible, the Torah also teaches that if one sees a donkey struggling under its burden, he must stop what he is doing and help the donkey's master unload the animal to alleviate its suffering.¹ And when one plows the field with his ox, he is forbidden to muzzle the animal.² This mitzva goes beyond the alleviation of physical suffering, for it teaches us to realize the psychological pain the animal might experience having to be surrounded by forage but unable to eat from it.

Our rabbis teach that even so great an individual as Moshe Rabbenu was not chosen by the Almighty to lead the Jews out of Egypt until he had proven his sensitivity as a shepherd guarding the flocks of Jethro.

And Moshe, too, was not tested by G-d except by [his treatment of] the flocks. Our Rabbis taught that when Moshe our teacher, may peace be upon him, was a shepherd for Jethro in the desert, a kid ran away, and he chased after it until he reached [a faraway place], where he chanced upon a pool of water. The kid stopped [running] in order to take a drink. When Moshe reached him, he said, "I didn't realize that you were running because you were thirsty. Now you must be tired!" Whereupon he picked up the kid and carried it on his shoulders. At that, the Holy One, Blessed by He, said, "You have so much pity to lead the flocks belonging to flesh and blood [Jethro] I swear that you will be the shepherd for My flock, Israel."³

The great man cannot be one who is callous to the needs and wants of those under his tutelage. Sensitivity to the needs of the weak is a prerequisite not only for a leader, however, but also for

1. *Shemot* 23:5

2. *Devarim* 25:4

3. *Midrash Rabbah, Shemot* 2:2

the ordinary Jew at all times. Our rabbis taught⁴ that a person cannot sit down to eat until he has fed his animals, based on the verse "And I will give grass in your fields for your animals, and [afterward] you shall eat and be satisfied."⁵

The Talmud teaches that the most revered sage, Rabbi Judah the Prince, was severely punished by Heaven because of callousness to an animal.⁶ Once as he was walking in the street, a young calf being led to the slaughter broke away from its keepers and ran to him, hiding in his robes. Rabbi Judah pulled the creature away and handed it over to the slaughterer, remarking to it "Go, for you were created for this purpose." What was really wrong with what the rabbi said? Was the animal not created in order to bring benefit for man? But there was a certain hardness of heart, a lack of pity, in allowing so very young an animal to be slaughtered.⁷ Therefore, Rabbi Judah suffered terribly from gastrointestinal ailments for years, and it was understood that his pain was a rebuke for his attitude. Only years later was he cured, when he demonstrated his sensitivity to an animal's feelings by not

4. *Berachot* 40a and *Gittin* 62b. See also *תיז סיק צו*; מגן אברהם who debate whether this is forbidden by biblical law or rabbinic restriction. See also *שדי חמד חלך* pp. 41 and 219, who questions whether it is only a meal which is forbidden or whether it might even be forbidden to taste food before feeding the animal. Note that *תיז דינה ומיניהם* discusses whether the prohibition extends even to drinking before he gives his animal, and *מקור חסידות* probes whether the rule applies to the morning meal or to any time a person wants to eat. *תיז* also writes on this.

5. In *נתיבות עולם*, Nachav ha-Zedakah, Part 2, the Maharal expands upon the conceptual basis of the law, noting that someone who does an act of *chesed* with a person or with an animal actually receives a greater benefit than the recipient of the *chesed*.

6. He also explains why a person must feed his beast before himself partaking of a meal.

5. *Devarim* 11:15.

6. *Bava Metzia* 85a.

7. The Maharsha offers the explanation that although indeed a calf is meant to be slaughtered eventually, this one was almost new born, and Rebbi's attitude to it was unkind. The *Gaonim* fault him for lacking compassion for the animal which had turned to him for help.

allowing his maid to chase away a cat. On that occasion, he admonished her to be gentle, for "His mercy is upon all His creatures."

On the other hand, the Torah makes it abundantly clear that "the Earth and all the fullness thereof" were created for man's use and pleasure, that he is entitled to use animals for food, for work, for play, for his benefit. Is that the extent of man's control? Are there limits to what use man can make of animals, or does he have *carte blanche* in using them to satisfy his every whim? Specifically, are there halachic restrictions on performing experiments upon animals for the benefit of human? Whether animals can be used for various forms of experimentation is a question of crucial importance, particularly in light of the tremendous expansion recently in scientific experimentation in the medical field. Must the hoped-for gains be of life-saving proportions, or may an animal's life be taken even just to improve the quality of human life? Once we posit that an animal may be used in an experiment, are we required to take any precautions to minimize suffering in the course of that experiment? We will search for answers to these questions as well as to others which arise in the course of the following study.

Animal experimentation is a halachic issue whose resolution is important in its own right; incidentally, the inquiry to determine the halacha may also serve as a virtual paradigm of rabbinic methodology in carving a halachic path out of a welter of talmudic material, parts of which seem contradictory. It is fascinating to trace the development of Jewish legal thought on this matter, and we will observe how, over the centuries, scholars have maneuvered through a maze of rabbinic teachings in order to arrive at halachic rulings which are internally consistent and in accord with all the texts.

In *Chullin* 85b the following story is told:

רבי חייא נפל ליה יאניבא בכיתנה אתה לקמיא דרבי אמר
ליה שקל עופא ושות על בוביתא דמייא.

Rabbi Hiyya had a pile of flax which became infested with worms. He came before Rabbi [to ask his advice]

and he said to him, "Take a bird and slaughter it over a tub of water."

The purpose of this was so that the worms would smell the blood and that would cause them to come out of the flax. The Gemara does not tell us whether the measure was effective, but that is not the point — clearly, Rabbi (Rabbi Judah the Prince who compiled the Mishna) felt no hesitation in recommending slaughter of a bird for a purpose other than food — as a matter of fact, it seems that the bird was to be used only as a means of gaining a financial benefit by saving the flax. Nor is this episode the only one of its kind, for in *Shabbat* 77b, we learn that "Rav said, 'Whatever G-d made in his world was not made for naught: He made a snail, which is [helpful for curing] a scab, [he made a] fly as an antidote for a hornet's sting.'" Here, again, we find the rabbis considering the use of living creatures for a person's use or benefit as a perfectly acceptable, even laudable option.⁸

On the other hand, there are passages in the Gemara which convey quite a different impression. Consider the following episode in *Chullin* 7b:

שמע רבי נפק לאפיה אמר ליה רצונך סעוד עצמי אמר לו
הן צהבו ניו של רבי ... כי אתה איתרמי על בהווא פיתחה

explains the "Seh La-Azazel" as something that was permitted because it was being used for a mitzva.

רְהִיּוּ קִיְמִין בֵּיתָה כּוֹדְנִיתָה חֹוֹרְתָה אָמַר מֶלֶךְ הַמוֹת בְּבֵיתוּ
שֶׁל זֶה וְאַנְיַ אָסְעָד אַצְלָו שָׁמַע רַבִּי נַפְךְ לְאַפִּיה אָמַר לֵיהּ
מוֹבִינִינָא לְהֹ אָמַר לֵיהּ וְלִפְנֵי עֹור לֹא תָתַן מַכְשּׁוֹל מַפְקָרָנוֹ
לְהֹ מַפְשָׁת הַיּוֹקָא עֲקָרָנוֹ לְהֹ אַיְכָא צָעֵר בְּעַלְיִ חַיִם קַטְלִינָא
לְהֹ אַיְכָא בְּלַ תְּשַׁחַת הַהָּ.

One time, Rabbi heard that Rabbi Pinchas ben Yair was coming. Going out to greet him, he asked if the revered Rabbi Pinchas would be willing to dine with him. When R. Pinchas ben Yair agreed, Rabbi's face "lit up" with joy. However, later, when the rabbi entered his host's domain, he was startled as he came through the door to see that there were white mules on the property. He exclaimed, "The Angel of Death is in this one's house, and I am going to eat with him?!" [Apparently, white mules were considered by him to be dangerous animals.] Rabbi was upset when he heard this and immediately offered to sell them, but R. Pinchas replied, "Do not place a stumbling block before a blind man!" [How can you sell someone a dangerous animal and put that person in danger?] So then Rabbi offered to let the mules go, to make them *hefker* [ownerless], but once again R. Pinchas objected, saying that that would only spread the danger further. Then Rabbi said he would remove their hooves, so that they could not harm anyone, but R. Pinchas objected that "this would entail pain to the animal." Finally, Rabbi decided that the only solution was to kill the animals, but here again R. Pinchas would not allow it, for "it is *bal tashchit* [a waste]."

The ultimate fate of the mules is not our concern here, but there is an important principle which we may discern: Rabbi wanted to perform a mitzva — *lo tasim damim bevaitecha* — to remove a dangerous object from his house, yet his mentor would not allow him to cause the animals pain, even if by doing so he would remove a halachic violation from his house.⁹

9. This text apparently is the source for the famous ruling of the *Nodah*

We can begin to appreciate the dilemma which the *posek*, the halachic decisor, faces. On the one hand, the Talmud teaches that everything in this world, including living creatures, was created for the benefit of man, and there seems to be no hesitation to kill an animal even only in order to realize some financial gain. Yet elsewhere in the Talmud a saintly rabbi forbids hurting an animal, even if the pain is caused in the process of fulfilling a biblical command. The dilemma continues to be reflected in the *Shulchan Aruch*, wherein we find two rulings which appear to be based on opposing principles:

כל דבר הצריך לרפואה או לשאר דברים לית ביה משום
אייסור צער בעלי חיים וכן מותר למטרות נוצחות מאוזחות
חיות וליכא למחש משום צב"ח.¹⁰
ומ"מ העולם נמנעים דהוי אכזריות.¹¹

Whatever is needed for healing or for some other purpose, there is no prohibition of "pain to animals" [involved in it], and therefore it is permitted to pluck feathers from living geese [for their down] and one need not be concerned about "pain to animals".

[Here Ramo appends:] Nevertheless, people hold back from doing it, since it is cruel.¹²

Elsewhere in the *Shulchan Aruch*¹³ the law is given that one may pull out feathers which are impeding the *shochet*, so that he

BiYehudah that the principle of avoiding pain to an animal (*Tzaar baal chai*) does not forbid the killing of an animal. However, he is virtually alone in this view that in killing an animal there is no issue of causing it pain. *הינוך* חנ"א (ח"ז כ"ד) maintains that the latter discusses the principle, but the *Chatam Sofer* (ח"ז כ"ד) maintains that the latter text cannot serve as proof either way on this question. For further discussion of this topic, see יעקב ח"ג ע"א; ש"ה מקובצת ב"ב כ, שואל ומשיב שבות י"א (דמתיר רק לזרוק בבוד מלבות). *ח"ג-טהר*, *ריב"א* חולין י"א; *תוס.* ע"ז י"א (דמתיר רק לזרוק בבוד מלבות).

10. ש"ע אבן העור ה"יד

11. רמ"א, שם

12. The Vilna Gaon finds the source for this stringency in the talmudic account of Rebbi, whose many years of physical affliction were attributed to his callousness towards an animal, as we have noted.

13. רמ"א, יורה דעה, ב"ג ס"ו, ב"ד ס"ח; ש"ר אות ח

may slaughter the bird properly. There is no mention whatsoever of cruelty or pain to the animal.

What then is the halacha — is cruelty to animals to be avoided, as the Ramo indicates, or is it of no concern, as when the *shochet* has to prepare animal for slaughter? And if there is indeed a halachic principle about *tza'ar baalei chaim* (pain to animals), how is it balanced against other principles or values with which it may conflict?

Biblical or Rabbinic Halacha?

One of the first questions that has to be addressed is if *tzaar baalei chaim* is an *issur d'oraitha* (biblical prohibition) or an *issur d'rabbanan* (rabbinic regulation). If it is the latter, we know the rabbis customarily included in their ordinances the proviso that in case of distresses to the person, their rulings do not obtain; thus, animal experimentation could more readily be condoned because of the benefits to humanity. However, if the origin of the *issur* is in the Torah, it is a far more serious limitation.

Disagreement as to the severity of *tzaar baalei chaim* is already found in the Talmud, where considerable discussion is recorded on the issue — albeit without a definitive conclusion. In *Bava Metzia* 32b where this *sugya* is explicated, the majority of *Amoraim* debating the question clearly hold that *tzaar baalei chaim* is forbidden by the Torah. They challenge the minority opposing view, yet each challenge is effectively rebutted by the *Gemara* itself, leaving the impression that the minority position has considerable merit.

The majority of authorities in the periods following the talmudic age also consider *tzaar baalei chaim* to derive from a biblical injunction,¹⁴ and we may take the ruling of the *Rosh* as representative of that understanding:

14. ערוך השולחן רע"ב ב. וצב"ח הסכימו רוב הפוסקים דrhoוי מן התורה
אווצר מפרשי התלמודו ב'ימ לב:
שדי חמור מערכה צ כלל ב
שער הצעין או'יח של'ב אותן ו; משנה ברורה, שם, אותן ו
אסור לעשנות שם איסור דרבנן בשבייל הבהמה רק מותר לומר לעכום".

בבמה שנפלה לאמת המים מביא כרים וכסתות ומנייה תחתיה בשבת משום דבטול כל' מהיכנו דרבנן וצב"ח דאורייתא ואתי דאורייתא ורחי דרבנן.

If an animal fell into a pool of water on the Sabbath, he may bring pillows and covers and place them under it, for ... [the prohibition of using these items in this manner] is of rabbinic origin but [the prohibition of] causing pain to an animal is from the Torah and overrides the rabbinic [prohibition].¹⁵

Furthermore, following the same reasoning, the Rosh permits a Jew to instruct a Gentile to milk a cow if the excess milk is causing the animal distress.¹⁶ The Ramo also rules that the *issur* of causing an animal pain derives from the Torah.¹⁷

A qualified dissent is expressed by the Rambam who is, however, the sole outstanding halachist who seems to consider the *issur* as a rabbinic restriction only. He writes that "a Jew is not obligated to get involved with the animal of a non-Jew and its load but [should do so only] to avoid animosity [which failure to help might arouse in the non-Jew]."¹⁸ "אבל בהמה של עו"ב ומשווא אינו אלא משום אייבא חייב להטפל בו."

We might deduce from this decision that Rambam considers the causing of pain to an animal to be a rabbinic teaching, for if it were Torah-mandated, it would make no difference whose animal

שמירת שבת כהילכחה פרק כ"ז

משנה ברורה תקכ"ג, ביאור הלכה (ונראת שהטעם שם דהוי צער בעלי חיים).
ש"ע הרב הלכota צב"ח ס"ח

15. *הלכות הראש.* שבת קכח. However, not all rabbinic prohibitions are set aside. The *Mishnah Brurah* rules that one may not use his hands to help pull the animal out of the pit, since it is forbidden to handle an animal on Shabbat — even though the prohibition is rabbinic (*muktza*).

16. *Orach Chaim* 305:20, two opinions are brought concerning the permissibility of asking a Gentile to milk a cow on Shabbat. See also מרדכי ב"ם שם; מרדכי ע"ז יג; ר' ב"ם, מאירי ב"ם, חינוך, מצווה תנא (לפי הורמה איסור דאורייתא הואר).

17. רמ"א, חושן משפט רע"ב - ט: "ו"י"א לפרק חייב אפילו אין עכו"ם שם משום דצב"ח הווי דאורייתא".

18. רמב"ם, הלכות רוצח יג:ט

it is. However, there is some ambiguity here. There are two possible scenarios which Rambam could have had in mind — (a) an animal owned by a Gentile, struggling under the heavy burden it has to carry, needing someone to help remove the packs or (b) the same animal, carrying nothing, with the Gentile preparing to load packs onto its back. Which one does the Rambam mean when he says “the animal of a Gentile and its load” need be of no concern to the Jewish passerby? If it is the latter case, then Rambam is merely saying that Jew is under no religious obligation to lend a hand to a non-Jew who is loading up his animal (but maybe ought to help out in order to maintain friendly relations). If that be the case, then this passage is neutral on the question of whether the *issur* is biblical or rabbinic. On the other hand, if Rambam has in mind a situation where the animal has collapsed due to its burden, and yet he rules that the Jew need not get involved, obviously he maintains that the *issur* is only rabbinic.

Understandably, Rambam’s cryptic statement has aroused further debate in its own right. The Gaon of Vilna¹⁹ understands Rambam as definitely regarding *tzaar baalei chaim* as a rabbinic teaching, but the *Kesef Mishneh*²⁰ in his commentary to Rambam’s *Mishneh Torah*, sees it merely as a directive that a Jew need not put himself out to help a Gentile in the loading up of his animal.

19. גרא, חושן משפט רעיב י"א; פני יהושע; מנחת חנוך מצווה פ.

The *Or Sameach* notes that Rambam, in *Hilchot Shabbat* 25:18 and 26, seems to contradict himself, for there he rules that one should help an animal which fell into a pit on the Sabbath because “the rabbis did not rule where it might cause pain to an animal.”

The Gaon rejects any interpretation of this passage as teaching that rabbinic laws of Sabbath may be waived in deference to the *issur* of causing pain to an animal on the supposed grounds that it is of biblical origin. Not so, writes the Gaon. Rambam consistently considers the *issur* as a rabbinic mandate, but in this instance, there is *another* biblical ordinance which must prevail — the Torah specifically commands “rest” (*menucha*) on the Sabbath not only for us but for our servants and animals as well. Rambam overrides rabbinic Sabbath regulations in order to help the animal not due to the superior (biblical) origin of the command not to pain an animal, but due to the specific biblical command to assure rest for the animal on Sabbath.

20. כספ משנה הלכות רוצח יג

Despite the failure to reach a consensus on the crucial question of the nature of the *issur*, the prevailing halachic position has been to regard it as a biblical injunction; this has remained the majority posture.

The Nature of the Issur

The prohibition of *tzaar baalei chaim*, causing pain to an animal, is a term which requires definition. Most rabbinic authorities reason that there is a halachic limit to the pain, i.e., that this is not an absolute prohibition. One must differentiate between the minor distress an animal experiences when it has to carry a rider — a “pain” which surely does not fall within the religious restriction of *tzaar baalei chaim* — and the pain it feels upon being whipped. Thus, the Ran rules:

משום צב"ח דאוריתא ומיהו דוקא צער גדול אבל צער
מעט לא.

Causing pain to an animal is a biblical prohibition but specifically only a great pain; however, minor pain is not.²¹

Despite acceptance of this distinction between kinds of pain, there are no halachic guidelines for determining what is “great” and what is “minor” pain. Thus, even in our own time, we do not have specific rulings on the extent of the *issur*; now that animal experimentation has become an important step in the development of medical and pharmaceutical innovations to help humans, there is a great need for clarification of the issue.

The author of *Shvut Yaakov* was asked if one may try medicines out on animals, to see what effect they might have. In giving an affirmative answer²², even in a case where the experiment might cause pain or death to the animal, he explains his apparent dissent from the Ramo’s caution that one ought to refrain from

21. הרב ינאי ב"מ לב ד"ה ר' יוסי הגלילי. The same distinction is made by ר' ינאי ב"מ to explain the apparent contradiction in the *מדרכיו*; the same also in *גמוקו יוסף*.

22. שבות יעקב ג"עא.

plucking feathers from a live goose, since it is cruel — in that case, he explains, one is directly causing the animal pain, but when drugs are administered the animal will not feel the ill effects for a while and therefore it is permissible. He maintains that the Ramo only objected to causing direct pain to the creature but would have found no reason to interdict a delayed-reaction pain.

However, in another responsum on this topic,²³ the *Shvut Yaakov* limits his permission in two important ways: he would not allow animal experimentation if the benefit to scientific knowledge is negligible, trivial, or minor, nor would he sanction it if an alternate method of acquiring the information needed is available.²⁴ We cannot allow pain to an animal just because it might be easier than using some other method to gain the same information. Unessential animal experimentation he considers as callous disregard for Jewish law.

The underlying issue here is the balance of desirable alternatives — people have needs but animals have rights, too. We cannot of course put them on an equal level, but on the other hand we cannot be insensitive to the suffering of an animal which might result in only a negligible benefit to mankind. It is difficult to give broad guidelines, but in the words of *Chelkat Yaakov*,

העולה לנו מכל הניל דעפ"ד ודאי מותר לגורום צב"ח ע"י
נטיענות בשבייל חקירות מדעיות וללחכמת הרפואה אבל עפ"י
חסידות להנצל ממידת אכזריות ודאי אסור כפסק הרמא.²⁵

What emerges from the above [discussion] is that according to Jewish law, it is certainly permissible to cause pain to animals through tests in scientific research or medical study, but as a [measure of] piety to save oneself from [developing] the quality of cruelty, it is certainly forbidden, in accordance with the ruling of the Ramo.²⁶

23. *חלה ב-יק*

24. This theory is found in *ב"ג* in *ד"מ סוף ס' ב"ג*.

25. *ח"א-ל*

26. The only exception would be *shechita*, since this is the only way one can slaughter the animal for consumption.

His opinion is challenged by Rabbi Yechiel Weinberg,²⁷ who objects to the introduction of "*chassidut*" — piety — into this context. One may opt to act with extreme piety when it is only his own welfare which is involved, argues Rabbi Weinberg. But when the lives and health of other people are involved, the scientific researcher is not entitled to let his personal morality hold him to a standard higher than that set by Jewish law. If by Jewish law, it is permitted to experiment on animals, the researcher should proceed to do so.

ומאי חזית דצב"ח עדרף מצער החולמים أولי יכול לעוזר
לهم.

It is a warped sense of values which permits concern for the welfare of animals to take precedence over the needs of human beings.²⁸

Conclusion

Based on our research, we may make certain generalizations about the permissibility of performing scientific experiments on animals. Despite some disagreement as to the status of the prohibition of causing pain to animals — whether of biblical or rabbinic origin — virtually all rabbis agree that it is permitted to perform experiments on animals if the intention is to benefit humans. But that is not a blanket permit: although it is permitted in this case to cause pain to the animal, it is only "דרכו של איניש בך" if it occurs because of "something which people customarily do." What this limitation means in practical terms is not clear. It is of course understood that at all times, a

27. שריידי אש חלק ג, ז; halakhot Yekab.

28. In *Iggerot Moshe, Choshen Mishpat* II, No. 47, Rav Moshe Feinstein advises against swatting a fly which is bothering a person; he prefers that one kill the fly indirectly. In noting that he actually has no halachic source for this ruling, Rav Feinstein expresses his belief that killing has a deleterious effect on a person's character; therefore he advises that, whenever possible, it be done in an indirect manner. See also the commentary of *Or HaChaim* to Deuteronomy 13:18 and that of *N'tziv* to the incident of Pinchas. See also the Talmudic statement in *Devarim* י"א אות כ"ה.

person must be careful to minimize the animal's pain as far as possible.

There are other objections which may place a legitimate brake on animal experimentation. There are scientists who claim that some of the uses of animals in scientific studies are not needed, because the same results could be achieved without involving animals. Also, some destruction of animal life is wanton waste, tests performed for trivial purposes. These things would not be permitted under Jewish law. In addition, there is the fact that experiments are duplicated or triplicated in dozens of laboratories around the country and around the world, thus entailing massive loss of animal life. Given the ready access which scientists the world around have to each other's studies, the halacha could not countenance many experiments which do not really serve a worthwhile purpose but only repeat what has been done elsewhere.

Other scientific "advances" may also be barred by Jewish law simply because the discomfort they cause animals is too great for the negligible benefit to man. In this vein, R. Moshe Feinstein castigates the modern practice of penning up animals so that they can hardly move about as well as "fattening calves [with chemically doctored foods] in such a way that their flesh develops a white appearance." (White veal is considered preferable to dark veal). He denounces these practices as reprehensible.²⁹

What emerges from all this is that we cannot establish a firm ruling on the question of using animals in scientific experiments. Although in general, halacha condones causing pain to an animal if a person will benefit therefrom, that little "if" leaves a great deal to be determined. Much depends on the need and the circumstances, on the pain to the animal and the expected gain to humanity. This is a determination which the individual experimenter cannot make for himself but which must be addressed on an ad-hoc basis. As the horizons of scientific study expand, the need for further halachic guidelines grows.

29. אגרות משה אבן העור חלק ד' צ"ב

Heter Meah Rabbanim

Rabbi Gedalia Schwartz

Introduction

Rabbinic authorities throughout the ages have always been concerned with the welfare of the Jewish community, especially in regard to the difficult and sensitive situations affecting family relationships. The Talmud states: "The Sages were concerned with the welfare of the daughters of Israel."¹ This was especially evident in the matter of the *agunah*, i.e. a woman whose husband has disappeared and about whom there are vague reports of his death. Our Sages were very lenient in finding means to permit her remarriage, accepting even one witness confirming the death of the husband.²

The significance of finding a release or *heter* for an *agunah* to remarry is summed up by *Bach* (R. Joel Sirkes) who states, "whosoever releases an *agunah* is as if he rebuilt one of the destroyed buildings of Jerusalem."³

Our sages' concern was equally great for a husband who may

1. בתרבות ב' ע"א.

2. יבמות כ"ה ע"ב, צ"ג ע"א.

3. This statement of *Bach* is cited by many authorities such as *Heichal Yitzchak* I, 24

The author wishes to thank Rabbi Israel Poleyoff for his valuable assistance in the preparation of this article.

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have come into a state of *igun* (tied to an “absent” wife) due to the mental breakdown of his wife or because of her rebelliousness (*moredet*). Rabbinic authorities sought ways and means of releasing him from the anguish and tension of his marital limbo. We shall trace their efforts from the sources in the Torah to the development of the *heter meah rabbanim*, and its application today.

Polygamy

There is a fundamental difference in the situations of a man or a woman who are “bound” by marriages to spouses with whom they cannot or do not want to continue a relationship. According to the law of the Torah, a man can marry more than one wife, with no transgression attaching to this practice.⁴ The Gemara quotes Rava who explicitly declares “a man is permitted to marry any number of women in addition to his [first] wife” with the proviso that he have the means to support them properly.⁵ Rambam codifies this permissive regulation, adding that he may marry (a figurative) one hundred women either at one time or one after the other, while his wife cannot prevent the implementation of his plans.⁶ The Talmud itself abounds with halachot that involve bigamous and polygamous marriages. The first series of *mishnayot* in Tractate *Yevamot* deal with a man who has more than one wife who falls into the position of *yibum* (levirate marriage) at the death of his brother, whose wife happens to be related to one of his wives.⁷ Similarly, the first several *mishnayot* (and attendant Gemara) of Tractate *Ketubot* deal with the question (among others) of inheritance involving a husband who had more than one wife, the question depending upon who died first.⁸ Thus, even if his marriage were unsatisfactory for some reason, the man could take an additional wife and live happily with her. However, a woman,

4. אבן העור א:ט, “ונושא אדם כמה נשים...”.

5. בבמות ס"ה ע"א.

6. פרק י"ד הלכות אישות הלכה ג'.

7. בבמות פרק א' משנהות א' עד ד'.

8. כתובות פרק י' משנהות א' עד ו', ראה גם קידושין פרק ב' משנה ו', ז; גיטין פרק ב' משנה ז'.

according to the Torah, may not be married to more than one man at a time.

Nonetheless, although polygamy is referred to constantly in the Mishna and Gemara, it is done so more in an academic and hypothetical sense rather than as a reflection of actual practice. In fact, historic accounts indicate that monogamy was the rule rather than the exception during talmudic times. One interesting exception in fact was that of the guardian of Agrippa the King who posed a question of R. Eliezer if he, possessing two wives, one in Tiberias and one in Sephoris, with a succah in each location, is permitted to alternate succot and yet fulfil his requirement in regard to the mitzvah of succah.⁹

Cherem of Rabbenu Gershom

It was not until the advent of Rabbenu Gershom ben Yehuda (c. 960-1028) that what was practiced in fact was formulated into law. Many *takkanot* (constructive decrees) are ascribed to Rabbenu Gershom, two of them relating to marital matters. One was a ban against a man divorcing his wife against her will¹⁰ with excommunication the penalty for its violation; but this ban has little efficacy alone, for if the woman refuses to accept the *get*, the man could nevertheless marry someone else. Therefore, an

9. סוכה ר' ב"ז ע"א.

10. By way of clarification, in regard to any discussion concerning the halacha involving a *get*, it should be understood that the husband must initiate the *get* procedure. The marriage bond can only be terminated either by the husband's cooperation in giving a *get* to his wife or by the death of either spouse. The former is based on the Talmud's interpretation of the Torah verse "... and he writes her a bill of divorce and gives it in to her hand" (*Devarim* 24:1), the verse indicating that the husband must willingly give the *get*. Rambam, *Hilchot Gerushin* 1:2, emphasizes the first part of the verse which states "And it came to pass if she found no favor in his eyes ..." indicating that it depends upon the husband. See also Rashbam, *Bava Bathra* 48A, for a different nuance in interpreting this principle. The latter, termination of the marriage bond by virtue of death, is derived either from the verse "...lest he die in battle, and another man take her" (*Devarim* 20:7) or "And if the latter husband hate her and write her a bill of divorce ... or if he die ..." (*Devarim* 24:3). *Kiddushin* 13B.

additional ban against polygamy was simultaneously adopted by Rabbenu Gershom and the communities led by him.

In regard to the first prohibition, although the Talmud clearly states that a wife may be divorced even against her will,¹¹ nevertheless, Rabbenu Gershom prohibited such action without the wife's consent. Only in extreme cases of transgression or errant behavior was the *get* allowed to be delivered to her even against her will, since the *cherem* was not considered to be in force under such circumstances,¹² as will be explained hereinafter. These circumstances did not require any additional procedure other than writing and delivering the *get*. No *heter meah rabbonim* (rabbinic permission to take a second wife, as will be explained) was required in the instance where *get baal korcha*, a divorce against her will, was allowed. However, although the method of *get baal korcha* is halachically valid, as in the above described cases, most authorities have refrained from using this approach whether due to inaccessibility of the wife or an account of technical problems of the delivery of the *get* to her domain.¹³

A variety of reasons have been offered for Rabbenu Gershom's *cherem*. Some said that it was to protect women from being abused and exploited by powerful, unscrupulous and immoral individuals. Others suggested that it was to preserve domestic tranquility with one spouse rather than have quarrels amongst rivals in a polygamous household. Economic considerations were mentioned by other rabbinic authorities, since in the Diaspora the economic stability of the Jews was extremely precarious. Further, the fact that the non-Jewish society around them had banned polygamy was also stated as a cause for the *cherem*, in order not to jeopardize the state of wellbeing of the Jewish communities.¹⁴

It should be pointed out that Rabbenu Gershom's *cherem* was not accepted universally by all Jews, nor was it intended as a

11. משנה יבמות דף קי"א ע"ב.

12. עין רמ"א אבן העזר קט"ו:ד' וקי"ט:ג.

13. שבות יעקב א' קכ.

14. אוצר הפוסקים אבן העזר א', י'ב.

permanent restriction. Only Ashkenazic Jews living among the Christians accepted the *cherem*, while the Jews who followed Sephardic law (primarily in Spain, North Africa, and other lands under Moslem dominion) did not. According to Rabbi Shlomo ibn Aderet, the great authority of medieval Spanish Jewry, the *cherem* was not accepted in Spain and other countries. Thus, historically, it became known that Sephardic Jewry did not adhere to the ban of Rabbenu Gershom. However, in actual practice, it seemed to be the prevailing *minhag* among many Sephardim that at the time of marriage, the husband would take an oath that he would not take another wife while married to his first wife. This made matters much less complicated in a situation where the wife became incompetent or unavailable for delivery of a *get*. The husband could approach the rabbinic court for permission to take another wife by the procedure of the dissolution of his oath, and the Beth Din would grant such permission after having thoroughly investigated the circumstances.¹⁵

Since no *cherem* of Rabbenu Gershom was in force within their communities, the Sephardic authorities have had no need to seek extraordinary remedies in situations where the ban needs to be circumvented.

Considerable debate exists about the severity which ought to be attached to the *cherem* of Rabbenu Gershom. Since the bans were accepted and regarded by the Jewish communities as exceptionally severe *issurim*, virtually on the level of an *issur* derived from the Torah itself, we must be very strict in its enforcement according to some authorities. However, others argue that the innovations enacted by Rabbenu Gershom and his assembly are no different than any other rabbinic strictures that have been instituted throughout our history. Thus, in case of doubt (*safek*), we should follow the accepted legal practice to be lenient with respect to application of rabbinic rules (*safek rabbanan le-kula*).

Further, it should be noted, even among those who accepted

15. היכל יצחק I, כ"ז (ר' יצחק הרצוג) פחד יצחק, נושא "חרם דרבנו גרשום",

his *cherem*, Rabbenu Gershom intended his *cherem*, to be in force only until *sof elef hachamishi*, the year 1240.¹⁶

Thus, there are those who maintain that adherence to the ban against taking two wives is, nowadays, only a *minhag* and does not have the force of a *cherem*. Others note that about a hundred years before the expiration of the ban, Rabbenu Tam, Rashbam, and an assembly of their colleagues the Tosafists, as well as other leading representatives of the Ashkenazic communities met and declared anew their acceptance of the various *charomim* promulgated by the assembly of Rabbenu Gershom. This renewal of the bans was accepted without any expiration date being stipulated; thus, most leading rabbinic authorities maintain that the *cherem* is indeed in full force today. However, since there are those who consider it only a *minhag*, this might be a factor in arriving at a lenient halachic ruling in case of dire necessity.

Halachic Precedent For The Cherem

The introduction of a *cherem* such as Rabbenu Gershom's has halachic precedent and is within the acceptable bounds of halachic development. The Talmud presents us with a number of situations where the sages appear to uproot a law that is formulated in the Torah. Perhaps the most well-known of these situations are the rabbinic prohibition of sounding the *shofar* or of fulfilling the mitzvah of *lulav* should Rosh Hashonah or Succot occur on Shabbat. The reason for the restriction is quite popularly known: "lest he inadvertently carry the *shofar* (or *lulav*) four cubits in the public domain."¹⁷ Thus, although the Torah ordained the mitzvah of *shofar* and *lulav*, the rabbis forbade its fulfillment on Shabbat.

Problems Resulting From The Cherem

For all its demonstrable value, the *cherem* has created several problems. The *Otzar Haposkim* offers a fascinating overview of

16. בית יוסף אבן העזר א. שולחן ערוך שם א:י.

17. ראש השנה כ"ט ע"ב, סוכה מ"ב ע"ב "גירה שמא יטלנה ויבירנה ד' אמות בראשות הרבים".

the many questions that have been raised in the application of the bans of Rabbenu Gerhsom. We will consider some of the problematic situations.

Essentially the problems center about situations where the wife cannot or will not function as a wife, such as a woman who has become mentally incompetent (*shotah*)²⁰ or who refuses to act in a manner befitting a Jewish wife (*moredet*) or who simply disappears. Prior to Rabbenu Gershom's *cherem* the husband could, theoretically, marry a second time. But with Rabbenu Gershom's *cherem* in force this option is now denied to him. Should he ignore the *cherem* and marry another woman, halacha demands that he divorce one of the wives.²¹

To alleviate the plight of the husband in certain situations there was devised the *heter meah rabbanim*, a rabbinic release from the rabbinic ban against polygamy.

Heter Meah Rabbanim

The *Kol Bo* writes:

The excommunication ban which Rabbenu Gershom decreed [not to marry more than one wife] is not to be lifted except with the approval of one hundred sages from three communities and from three countries such as Aragon, Lombardy, and France. They should not agree to remove it until and unless they see an unquestionable and clearcut reason for such leniency, and also that that particular case should be clearly defined. . . And her *ketubah* should

20. How to determine what constitutes mental incompetency is another matter altogether. In general, the Beth Din would determine whether this incompetence has created a situation that has disrupted the normal marital relationship, although the woman did not display every one of the signs of *shotah* (mentally disabled woman) described in the Talmud (*Divrei Chaim* II:41; *Maharsha* I:21).

21. אבן העזר א', רמ"א י'

be guarded and kept either in collateral or cash in the possession of a trusted individual.²²

R. Joel Sirkes (*Bach*) writes in the name of his teachers and predecessors an opinion that is representative of the prevailing view, that whenever such problems develop between husband and wife they should first be referred to the leading rabbinic luminaries of the generation; if permission was given to take another wife it could only be enacted after the procedure of *heter meah rabbanim*.²³

The general procedure for this *heter meah rabbanim* is as follows: The Beth Din first thoroughly examines the claims of the husband as to whether indeed his wife has degenerated to the point of *shotah* or whether she indeed has acted as a *moredet*. Further, in the former case they would have to determine that her illness is irreversible, and in the latter case that she is incorrigible. The details of the particular situation must be clearly recorded, together with the Beth Din's reasons why Rabbanu Gershom's *cherem* should be waived and the husband permitted to marry a second wife. All of this is then circulated among one hundred Torah scholars for their further examination and their endorsement of the step to be taken.

When situations of this kind are presented to these rabbis, they discuss and analyze every aspect and all the ramifications of the case before approving any ruling that would in any way contravene the very ban itself. After points of leniency are found they explain their arguments, which basically include that the very ban itself was subject to the statute of its own limitations, (i.e. to the end of the fifth millennium, the year 1240,) and further that Rabbanu Gershom did not intend his *cherem* to be in force in the unfortunate situation of the case at hand.²⁴ However, it should be emphasized that over the centuries careful scrutiny was applied to every aspect of every particular case in determining whether the

22. כל בו קט"ז, וגם אוצר הפוסקים אבן העור א:י"י.

23. ב"ח סוף ס"י ו'.

24. דברי משה, הגהות לש"ע שם.

heter meah rabbanim could be utilized or not, or even in some circumstances, whether it was even necessary.

One of the first decisions which has to be made by the Beth Din is to determine which legal remedy to apply to the given situation. After all, there are two ways to help a man who has arrived at an irremedial impasse in his marriage—either he may be given permission to divorce his wife against her will (*get baal korcha*) or he can be allowed to marry a second woman while still married to the first. Both these avenues are open to him according to the Torah, and it is only the rabbis who forbade him to do either; therefore they can also release him from their ruling.

Some rabbis²⁵ have argued that it is preferable to allow him to divorce his wife against her will, since there is some basis for this in the Gemara; furthermore, the divorce is a one-time act of defiance of the *cherem* of Rabbenu Gershom, but if he were to take a second wife, then every single day he transgresses the *cherem* which forbids being married to two women at once. For this reason, they argue that if the Beth Din decides that he must be granted relief from his situation, it should be through a *get* issued without the woman's consent. However other rabbis²⁶ argue that halachically it would be preferable to grant him a *heter meah rabbanim*—they find that the other *cherem*, against divorcing a woman without her consent, has a wider range of acceptance and validity, because even Sephardic Jews more or less consented that they would not allow a man to divorce his wife against her will, while they never accepted the ban against two wives. Since the latter then is not a universal Jewish custom (*minhag she-pashat bechol yisrael*) it is technically easier to issue a waiver for it. Yet a third group of rabbis²⁷ finds no difference in either course and suggests that it all depends on the local custom which remedy is followed.

For what reasons might it be argued that Rabbenu Gershom,

25. אוצר הפוסקים א, ס"ק ס"ח אותן י"ב. Are there any people for whom no *heter* would be given? See *Aggrotot Meshah, Aben ha-ur D'ah, 20*.

26. שם.

27. שם בשם כמה אחרים.

in promulgating a *cherem* against having two wives, never intended the *cherem* to apply to a particular case? That is, on what basis may a *heter* signed by one hundred rabbis be issued? There are a number of areas which are traditionally considered to be outside the intent of the *cherem*.

Banim: If the effect of the *cherem* is to prevent a man from fulfilling the biblical commandment to have children (which is an obligation primarily for the man, not the woman), then there is strong reason to excuse him. Already in the Gemara²⁸ the rabbis teach that if a couple is married for ten years and has no children, they should be divorced. If she refuses to accept the divorce, he will never be able to fulfill the mitzva of having children. In such a case, then, the rabbis will rule that the *cherem* was never intended here and allow him to override the *cherem* and divorce her against her will, or in some cases, issue a *heter meah rabbanim*, depending on the circumstance.

וה"ה בכל מקום שיש דיחוי מצוה כגון ששהה עם אשתו י' שנים ולא ילדה, אמן יש חילוקים וס"ל דחרם ר"ג נוהג אפילו במקומות מצוה, ואפי' במקומות יבום וצריך ללחוץ.

And this is the law in every situation where a mitzva cannot be performed, as for example, if he lived with his wife for ten years and she did not give birth. However some disagree and argue that the *cherem* of Rabbenu Gershom applies even in the case of a mitzva, even *Yibum*, and he has to make *chalitza*.²⁹

Yibum: According to Torah law, if a man dies without issue, it is incumbent upon his brother to marry the widow and father a child with her. This is the mitzva of *Yibum*. What if the brother

28. יבמות ס"ד.

29. שם ס"ק ס"ח אותן י' ב, דרכיו משה א"י, רמ"א א"י.

According to halacha, a man has not fulfilled the mitzva of having children until he has fathered a boy and a girl, but there are no halachic precedents for allowing him to circumvent the *cherem* if he has one child already, for even if he has not fulfilled the mitzva of having children completely, he is not given permission to override the ban of Rabbenu Gershom.

already has a wife? Although Ashkenazic Jews do not customarily allow *Yibum* but rather go through a release ceremony (*Chalitza*), the Ramo records two opinions about what to do.³⁰ Basically, the question is, did Rabbenu Gershom intend his *cherem* where a mitzvah is involved or not

Issur: The reverse situation of mitzva is *issur* — let us say that man and woman are married but actually, according to halacha, they are not allowed to be married; for example, a Cohen married to a divorcee. Now he repents and wants to divorce her, but she refuses to accept the Jewish divorce. Does the *cherem* of Rabbenu Gershom apply in this situation or do we permit him to divorce her against her will? This is one of the many situations which is discussed frequently in the halachic literature.³¹

There are other situations which also raise the question if Rabbenu Gershom ever considered that his *cherem* ought to apply, because actually a divorce is mandated by Jewish law in these cases. If a woman refuses to observe the Sabbath, or if she won't prepare kosher food for him, or other situations where he finds it impossible to live with her, there are many rabbis who see reason for issuing a *heter meah rabbanim* (if she refuses to accept a *get*) or to divorce her against her will.

Thus we find that the *cherem* of Rabbenu Gershom has never had the effect of a monolithic law in Judaism, overriding all other concerns. There are even those who argue that the *cherem* was only instituted for *perutzim*³² (lowlifes) and was never meant to trap a man in a marriage with a woman with whom he cannot live a life of Torah and mitzvot. This brings us to another important category of exemption from the *cherem*.

Moredet: The word “*moredet*” translates as a “rebellious wife”, but halachically it indicates a woman who refuses to continue in a conjugal relationship with her husband and refuses to accept a *get* from him (*Mona-at mimennu tashmish*). In talmudic

30. פ"ק.

31. אוצר הפסוקים א"ס"ק ס"ג אות ז.

32. שם.

times, such a woman was subjected to social or financial pressures (her recalcitrance was reported to the community, or she could be divorced without receiving the money owed from her *ketubah*). However, such recourse is no longer feasible, yet all agree that the man is entitled to find another wife. Some authorities³³ would even allow him to marry another woman without a *heter meah rabbanim*, arguing that the ban of Rabbenu Gershom does not even apply in this situation. However, since this is not a universally accepted view, it is customary to give him a *heter meah rabbanim*.

The same is true of a woman who simply abandons her family, who is considered a *moredet*. But what should be done if, although she left him, he now knows where she is? Is he obligated to try to reconcile with her before getting a *heter meah rabbanim*, or, according to those who maintain that the *cherem* does not even apply, can he get remarried without even divorcing her? In other words, just because she has left him, has she automatically forfeited the protection given her by the *cherem*, not to be divorced against her will? Can she refuse to accept a divorce and perhaps return to her home, or is he automatically exempted from the *cherem* as soon as she leaves him?

A variation of the theme of *moredet* is the case of a woman who is not living with her husband due to a disagreement which they have; upon the resolution of the disagreement, she would be willing to continue as his wife. In order to resolve the disagreement, he asks her to appear with him before a rabbinic court (Beth Din) to resolve the matter. She refuses to go, which is in itself a transgression against Jewish law. Does that refusal place her in the category of a *moredet*? Is he thereupon entitled to receive a release from the hundred rabbis and take another wife, or does he have to continue to try to resolve the conflict between them? Just how much he is required to do to find a resolution to his marital problems is a subject often discussed in responsa

33. רמ"א אבן העזר ע"ז ב.

literature;³⁴ it is clear that a *heter meah rabbanim* is only issued after protracted efforts prove to be irredeemably futile.

In one case on record,³⁵ a husband and wife had gone to the Jewish court over some issue, and the court had ruled in her favor. Subsequently, the husband approached the court with new evidence and asked for a re-hearing. But the wife refused to come a second time. Nevertheless, the rabbi would not label her as a *moredet* or a sinful person for refusing to come, because they understood that she was acting only out of the mistaken belief that a person is not required to appear before a court after the case has been resolved. She is only a *shogeget* (mistaken), not a *moredet* (rebel).³⁶

What emerges from this discussion is an awareness that if the woman refuses to listen to him, not out of spite but out of a genuine — even if mistaken — perception that she is within her rights, she cannot be labeled *moredet*, and the court generally tries to find some other way to reconcile the differences between the two partners other than overriding the *cherem* of Rabbenu Gershom.

What if a woman is captured, and he doesn't want to pay the ransom? Can he be given a *heter meah rabbanim* on the claim that his wife is not living with him and he is entitled to take another? Of course not.³⁷ Similarly, if a woman is sick (whether physically or mentally) and cannot continue her conjugal relationship, but he does not want to pay for the medical treatment to cure her, he cannot approach the court for *heter meah rabbanim*. On the other hand, if her illness is irreversible and prevents them from having a normal married life, there are times when the Beth Din will issue a *heter meah rabbanim*; but a great deal depends on the circumstances.³⁸

There are times that couples have irreconcilable differences,

34. שם פ"א אות ט"ז.

35. שם.

36. P. 310 סימן י, שם בהשומות.

37. שם.

38. שם ע"ג אות זי.

but that is not usually sufficient cause for the Beth Din to grant a *heter meah rabbanim* if the woman refuses to accept a *get*. Some of the cases recorded in halachic literature include disputes as to where to live — he wants to move to another city where he can get a better job, but she won't go along. On the other hand, she won't accept a divorce because she wants to stay married to him. This is not a case where the rabbis are quick to grant a *heter meah rabbanim*; rather they advise the couple to work out their situation themselves.³⁹ Sometimes, a man wants to move his family to Israel, but she doesn't want to go. Despite his claim that she is preventing him from fulfilling the great mitzva of living in the Land, the rabbis do not give him a *heter meah rabbanim* in such a case, nor do they allow him to divorce her against her will, because they realize that it can readily be used as an excuse by anyone who wants to divorce his wife.⁴⁰

Thus, although respecting the principle of the ban against polygamy, historically the *heter* has allowed the husband to marry another wife in instances where the first wife became mentally incompetent to accept a *get*, or where she was in the category of those whom it was necessary to divorce, such as an apostate, or in infrequent situations where rabbinic opinion judged that the *cherem* was never intended to apply.

Not all sages have been willing to employ the *heter meah rabbanim*. Rabbi Shlomo Kluger, although displaying much leniency in other areas of Jewish law, was very adamant in his refusal to participate in any *heter* involving the *cherem* of Rabbenu Gershom. His reasons were that he trembled at tampering with the stringency of "*divrei sofrim*," rabbinic prohibitions. Moreover, he felt that contemporary generations could not be trusted as to their sincerity and motivation in seeking to obviate the edict of Rabbenu Gershom.⁴¹

The selection of the figure one hundred as the number of *rabbanim* required to lift the *cherem* is a matter of discussion

39. שם.

40. שם.

41. האלף ל' שלמה. אכן העור ז'.

among various authorities. Some⁴² suggest it has its roots in the statement of the Talmud: "A hundred who sat in judgment,"⁴³ which represented the largest gathering of a judicial body or some form of Sanhedrin. Others cite the *Sifri* "...and all of the elders of that city, even a hundred ..."⁴⁴ The use of the word "all" in close proximity to "even a hundred" implies, according to the Talmud and *Sifri*, that one hundred is equivalent to all. In a practical sense, it means that one hundred rabbis lifting Rabbenu Gershom's *cherem* is tantamount to all the rabbis of that generation agreeing to its removal.⁴⁵

Some additional comments should be made here in regard to the issuance of the *heter meah rabbanim*.

1) In regard to the matter of mental disability, besides the *heter*, a *get* has to be written and transmitted to a person appointed as the wife's agent in the eventuality that she recover and thus be enabled to accept the *get*. This *get* has to be ordered and given to the agent *prior* to the issuance of the *heter*. If the wife should recover before her husband actually remarries, then quite obviously, the original *cherem* remains in force.⁴⁶

2) Should the first wife recover fully from her disability after her husband received the *heter* and remarried, and should she at that time refuse to accept the *get*, there is a difference of opinion as to how to resolve this impasse. R. Yitzchak Elchanan of Kovno was of the opinion that the agent can deliver the *divorce baal korcha* (against her will) since under these circumstances, Rabbenu Gershom issued no ban on a *get baal korcha*.⁴⁷ Others have ruled that the *get baal korcha* should not be invoked, but rather that pressure should be brought to bear against her by various means such as withholding all financial support and maintenance.⁴⁸

42. משיב דבר IV, 4, ז, הובא באוצר הפסוקים שם.

43. הוריות ג' ע"ב.

44. ספרי, שופטים כא:ו.

45. אבני זכרון II, 62, הובא באוצר הפסוקים שם.

46. פתחי תשובה אבן העור א:ט"ז, אוצר הפסוקים י"ד.

47. עין יצחק ב'.

48. בית יצחק י"ג: י"ג, אבני נור י', אוצר הפסוקים י"ד.

3) The issuance of the *heter* does not absolve the husband from any further responsibilities towards his first wife. The mentally-incapacitated wife has to be cared for by her husband and protected from abandonment. Proper financial arrangements have to be made for her welfare and support, either by a sufficient sum of money being placed in escrow by her husband or other member of the family or, according to many authorities, by confining her in a proper institution or hospital for her care and protection, and not necessarily in private, rented quarters.⁴⁹ In any case, such measures have to be clearly arranged and approved by the Beth Din.

4) On the matter of her *ketubah* (marital contract) the husband must also guarantee its payment. If he cannot produce the cash to be placed in escrow for the *ketubah*, a promissory note is considered to be acceptable as a guarantee of payment.⁵⁰

Some Representative Examples

Rabbi Moshe Sofer in the 19th century was presented with the case of a wife who, being mentally ill, was taken to some distant city for a possible cure. After a lapse of some time, a person came from that city to report to her husband that she had died. As a result, the husband was interested in remarrying on the basis of the testimony of this one individual. R. Sofer upheld a ruling of the *Beit Shmuel*⁵¹ who affirmed the force of Rabenu Gershom's *cherem* as "itchazeik issura," a full-fledged prohibitive state, which cannot be reversed by the testimony of one witness. R. Sofer observed that since the woman in question was mentally incompetent the option of the *heter meah rabbanim* was available. Therefore, he concluded, though it involved bother and effort, a *heter meah rabbanim* must be obtained rather than permitting the husband to remarry on the basis on the testimony of one person.⁵²

Although the case of a rebellious woman (*moredet*) is one of the situations calling for a *heter meah rabbanim*, some rabbis have

49. אוצר הפסקים שם כ"ד.

50. שם.

51. אבן העזר א', אות י"ג.

52. חותם סופר, אבן העזר ב'.

held that in certain cases no *heter* at all was required, since the *cherem* itself did not obtain.⁵³ Rabbi Jacob Loberman of Lisa was of this opinion in the case of a woman who had abandoned her husband and had refused to accept a *get*. His ruling had the concurrence of R. Akiva Eger.⁵⁴ In referring to this responsum, R. Naftali Yehuda Berlin of Volozhin ruled that no *heter* was required in a similar case of abandonment, but he did require that a *get* be written and given to some individual designated by Beth Din to accept it on behalf of the wayward wife (*get al yedei zicui*), in order to spare her violating the severe halachot involving a married woman (*eishet-ish*).⁵⁵

Conclusion

There are literally dozens of cases scattered throughout the vast responsa literature that examine and probe all aspects of the *cherem*, its application, and the use of the *heter meah rabbanim*. What emerges from a careful study of such cases is the concern by our sages to reinforce the original intent of Rabbenu Gershom's decree, that is, the protection of the woman's rights and dignity within a monogamous family structure. The occasional comment of some within the Jewish community claiming that the use of *heter meah rabbanim* is merely a convenient tool in the hands of some dissatisfied husband runs totally counter to fact and to the entire functional halachic process. The Torah community has always relied on the most competent halachic authorities of the highest moral integrity to rule on these and other difficult and agonizing questions. Deep, abiding faith in the halachic process being capable of resolving many difficult situations has been and will continue to be the guide for Torah living.

53. רמ"א א"ח.

54. נחלת יעקב ו'.

55. משיב דבר, אבן העוזר ח'.

Jewish Perspectives on Issues of Death and Dying

Dr. Fred Rosner

Introduction

Because of advances in medical technology, some people who in an earlier era would have died are today alive and well. Others who would have died are now alive but in a coma or a vegetative state. Medical technology has created as many problems as it has solved.

The new technology denies the physician a simple physiological end point for death. When is a donor dead (*vide infra*) so that his organs can be removed for organ transplantation? Is it ethical to infuse mannitol into a patient dying of a head injury to preserve his kidneys for grafting? Dare we remove kidneys from a donor whose heart is still beating? Is it "cruel" in the presence of a fatal disease, in the agonal hours, to prolong life (or death) by the use of machines?

What should be done and what should not be done for a terminally ill patient? Is an eighty-year old man with terminal prostatic cancer to be treated differently from a child dying of leukemia? Who is to weigh the value of a few more days of life? Who is to decide when the end should come? The physician? The

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patient? Should the decision be put upon the family? Should the patient have the option to choose a peaceful death without exposure to the seemingly relentless application of medical technology? Should one discuss this option with the patient? One basic question seems to be the extent to which any individual owns his own death. Does a person have the right to select how and when he will die? Is such a decision by the patient akin to suicide? We believe that only G-d gives life and hence only G-d can take it away. Individual responsibility for the preservation of one's life and health is apart from the duty of one person (including a physician) toward another's life and health, and society's responsibility concerning the life and health of its citizens.

The doctor-patient relationship is no longer what it used to be because of a variety of factors. There are legal forces, such as the medical malpractice issue, that may interfere with the physician's best clinical and ethical judgment. There are psychological forces pushing the physician to "do something". There are professional forces that may force a physician to act to protect himself from peer review. Patients are better informed and becoming more vocal. The physician's own religious and ethical values, his own experiences, his teaching by preceptor all play a role in deciding how he approaches a dying patient.

This essay discusses Jewish perspectives on death and dying and focuses on the subjects of euthanasia, hazardous medical or surgical therapy for the terminally ill, when not to use heroic or extraordinary measures to prolong life, the definition of death in Jewish law, and Living Wills.

Euthanasia

Arguments in favor and against euthanasia are numerous, have and continue to be heatedly debated in many circles, and will be only briefly summarized here.

Opponents of euthanasia say that if voluntary, it is suicide. Jewish religious teachings certainly outlaw suicide. The answer offered to this argument is that martyrdom, a form of suicide, is condoned under certain conditions. However, the martyr seeks primarily not to end his life but to accomplish a goal, death being

an undesired side product. Thus, martyrdom and suicide do not seem comparable.

It is also said that euthanasia, if voluntary, is murder. Murder, however, usually connotes premeditated evil. The motives of the person administering euthanasia are far from evil. On the contrary, such motives are commendable and praiseworthy, although the methods may be unacceptable.

I would like to present the classic Jewish sources which relate to this subject.

In Genesis 9:6, we find: "Whoso sheddeth man's blood, by man shall his blood be shed." In Exodus 20:13, it is stated: "And if a man come presumptuously upon his neighbor, to slay him with guile; thou shalt take him from Mine altar, that he may die." In Leviticus 24:17, there is the phrase "And he that smiteth any man mortally shall surely be put to death" and four sentences later we find again ... "And he that killeth a man shall be put to death." In Numbers 35:30, it is stated, "Whoso killeth any person, the murderer shall be slain at the mouth of witnesses" ... Finally in Deuteronomy 5:17, the sixth commandment of the decalogue is repeated: "Thou shalt not kill." Thus, in every book of the Pentateuch, we find at least one reference to murder or killing. These citations, however, all relate to intentional homicide and not to mercy killing.

Probably the first recorded instance of euthanasia concerns the death of King Saul. At the end of the first book of Samuel 31:1-6, we find the following:

Now the Philistines fought against Israel, and the men of Israel fled from before the Philistines and fell down slain in Mount Gilboa. And the Philistines pursued hard upon Saul and upon his sons; and the Philistines slew Jonathan and Abinadab and Malchishua, the sons of Saul. And the battle went sore against Saul and the archers overtook him and he was greatly afraid by reason of the archers. Then said Saul to his armor-bearer: "Draw thy sword, and thrust me through therewith, lest these uncircumcized come and thrust me through and make a mock of me." But his armor-bearer would not; for he was sore

afraid. Therefore, Saul took his sword and fell upon it. And when the armor-bearer saw that Saul was dead, he likewise fell upon his sword and died with him. So Saul died and his three sons, and his armor-bearer, and all his men, that same day together.

From this passage it would appear as if Saul committed suicide. However, at the beginning of the second book of Samuel 1:5-10 when David is informed of Saul's death, we find the following:

And David said unto the young man that told him: "How knowest thou that Saul and Jonathan his son are dead?" And the young man that told him said: "As I happened by chance upon Mount Gilboa, behold Saul leaned upon his spear; and lo, the chariots and the horsemen pressed hard upon him. And when he looked behind him, he saw me, and called unto me. And I answered: 'Here am I.' And he said unto me: 'Who art thou?' And I answered him: 'I am an Amalekite.' And he said unto me: 'Stand, I pray thee, beside me, and slay me, for the agony hath taken hold of me; because my life is just yet in me.' So I stood beside him, and slew him, because I was sure that he would not live after that he was fallen."

Many commentators consider this a case of euthanasia. Radak specifically states that Saul did not die immediately on falling on his sword but was mortally wounded and, in his death throes, asked the Amalekite to hasten his death. Ralbag and Rashi also support this viewpoint, as does *Metzudat David*.

The Mishnah states as follows (*Semachot* 1:1): "One who is in a dying condition (*gosses*) is regarded as a living person in all respects." This rule is reiterated by later codifiers of Jewish law including Rambam and the *Shulchan Aruch* as described below. The Mishnah continues (*Semachot* 1:2 to 4):

One may not bind his jaws, nor stop up his openings, nor place a metallic vessel or any cooling object on his navel until such time that he dies as it is written

(Ecclesiastes 12:6): "Before the silver cord [Midrash interprets this as the spinal cord] is snapped asunder."

One may not move him nor may one place him on sand nor on salt until he dies.

One may not close the eyes of the dying person. He who touches them or moves them is shedding blood because Rabbi Meir used to say: "This can be compared to a flickering flame. As soon as a person touches it, it becomes extinguished. So too, whosoever closes the eyes of the dying is considered to have taken his soul."

The fifth century Babylonian Talmud (*Shabbat* 151b) mentions as follows: "He who closes the eyes of a dying person while the soul is departing is a murderer (literally, he sheds blood). This may be compared to a lamp that is going out. If a man places his finger upon it, it is immediately extinguished." Rashi explains that this small effort of closing the eyes may slightly hasten death.

The twelfth century Code of Maimonides (Book of Judges, laws of Mourning, chapter 4:5) treats our subject matter as follows:

One who is in a dying condition is regarded as a living person in all respects. It is not permitted to bind his jaws, to stop up the organs of the lower extremities, or to place metallic or cooling vessels upon his navel in order to prevent swelling. He is not to be rubbed or washed, nor is sand or salt to be put upon him until he expires. He who touches him is guilty of shedding blood. To what may he be compared? To a flickering flame, which is extinguished as soon as one touches it. Whoever closes the eyes of the dying while the soul is about to depart is shedding blood. One should wait a while; perhaps he is only in a swoon ...

Thus, we again note the prohibition of doing anything that might hasten death. Maimonides does not specifically forbid moving such a patient as does the Mishnah but such a prohibition is implied in Maimonides' text. Maimonides also forbids rubbing

and washing a dying person, acts which are not mentioned in the Mishnah. Finally, Maimonides raises the problem of the recognition of death. This problem is becoming more pronounced as scientific medicine improves the methods for supporting respiration and heart function.

The sixteenth century code of Jewish law, the *Shulchan Aruch*, compiled in 1564 by Rabbi Joseph Karo, devotes an entire chapter (*Yoreh Deah*, chapter 339) to the laws of the dying patient. The individual in whom death is imminent is referred to as a *gosses*. Rabbi Karo's code begins, as do Maimonides and the Mishnah, with the phrase: "A *gosses* is considered as a living person in all respects," and then enumerates various acts that are prohibited. All the commentaries explain these prohibitions "lest they hasten the patient's death." One of the forbidden acts not mentioned by Maimonides or the Mishnah is the removal of the pillow from beneath the patient's head. This act had already been prohibited two centuries earlier by *Tur* (Rabbi Jacob ben Asher) in his code (*Tur Yoreh Deah*, chapter 339). The text of the *Shulchan Aruch* is nearly identical to that of *Tur*. *Tur*, however, has the additional general explanation: "The rule in this matter is that any act performed in relation to death should not be carried out until the soul has departed." Thus, not only are physical acts on the patient such as described forbidden, but one should also not provide a coffin or prepare a grave or make other funeral or related arrangements lest the patient hear of this and his death be hastened. Even psychological stress is prohibited.

On the other hand, Rabbi Judah the *Chasid*, author of the thirteenth century work *Sefer Chasidim*, states in section 723, "If a person is dying and someone near his house is chopping wood so that the soul cannot depart one should remove the [wood] chopper from there ..."

Based on the *Sefer Chasidim*, the *Ramo* (Rabbi Moses Isserles), in his glosses on *Shulchan Aruch*, section *Yoreh Deah*, chapter 339:1 states that

if there is anything which causes a hindrance to the departure of the soul such as the presence near the patient's house of a knocking noise such as wood

chopping or if there is salt on the patient's tongue; and these hinder the soul's departure, then it is permissible to remove them from there because there is no act involved in this at all but only the removal of the impediment.

Examples of such removal of impediments are cited in the Talmud. In a famous passage (*Avodah Zarah* 18a), a distinction is implied between the deliberate termination of life and the removal of means which artificially prolong the painful process of death. The passage describes the martyrdom of Rabbi Hananya Ben Teradyon, who was the victim of the Romans during the Hadrianic persecutions of the second century. The martyr was wrapped in the Scroll of the Torah from which he had been teaching, and placed on a pyre of green brushwood. His chest was covered with woolen sponges, drenched with water, to prolong the agony of dying. His disciples advised him to open his mouth so that he might be asphyxiated and have a quicker end to his suffering. He refused to do so saying: "It is best that He who has given life should take it away; no one may hasten his death." He did, however, allow the executioner to remove the wet sponges; the fire could then consume at its natural, unimpeded pace. This act of removing hindrances to natural death was deemed meritorious.

Another talmudic reference is to be found in *Ketubot* 104a: When Rabbi Judah the Prince was dying, the rabbis decreed a public fast and offered prayers for the prolongation of his life. When Rabbi Judah's maid, renowned in legend for her sagacity, discerned that he was approaching death and suffering great pain, she threw a jar from the roof to distract the rabbis and interrupt their incessant prayers. This, the Talmud relates approvingly, enabled his soul to depart in peace.

While this latter passage and later rabbinic statements based on it suggest that it is proper that a life in mortal suffering be ended (or at least to cease praying that it be prolonged), the first passage teaches clearly that it is proper actively to remove an artificial impediment to the process of dying. Various rabbinic

responsa on this subject are summarized by Rabbi J.D. Bleich in a recent book.¹

The sum total of this discussion of the Jewish attitude toward euthanasia seems to indicate, as expressed by Rabbi Jacobovits,² that "Any form of active euthanasia is strictly prohibited and condemned as plain murder ... anyone who kills a dying person is liable to the death penalty as a common murderer. At the same time, Jewish law sanctions the withdrawal of any factor — whether extraneous to the patient himself or not — which may artificially delay his demise in the final phase."

Rabbi Jacobovits is quick to point out, however, that all the Jewish sources refer to an individual in whom death is expected to be imminent, three days or less in rabbinic references. Thus, passive euthanasia in a patient who may yet live for weeks or months may not necessarily be condoned. Furthermore, in the case of an incurably ill person in severe pain, agony, or distress, the removal of an impediment which hinders his soul's departure, although permitted by Jewish law (as described by Ramo), may not be analogous to the withholding of medical therapy that is perhaps sustaining the patient's life, albeit unnaturally. The impediments spoken of in the codes of Jewish law, whether far removed from the patient as exemplified by the noise of wood chopping, or in physical contact with him such as the case of salt on the patient's tongue, / do not constitute any part of the therapeutic armamentarium employed in the medical management of this patient. For this reason, these impediments may be removed. However, the discontinuation of instrumentation and machinery which is specifically designed and utilized in the treatment of incurably ill patients might only be permissible if one is certain that in doing so one is shortening the act of dying and not interrupting life. Yet who can make the fine distinction between prolonging life and prolonging the act of dying? Certainly only a scholar of Jewish law is qualified to offer an opinion.

1. Bleich, J.D. *Judaism and Healing*. New York, Ktav, 1981, pp. 134-145.

2. Jakobovits, I. *Jewish Medical Ethics*. New York, Bloch, 1959, pp. 119-125.

Hazardous or Experimental Therapy for the Terminally Ill

A cardinal principle in Judaism is that human life is of infinite value. The preservation of human life takes precedence over all biblical commandments, with three exceptions: Idolatry, murder and incest or adultery. Life's value is absolute and supreme. Thus, an old man or woman, a mentally retarded person, a defective baby, a dying cancer patient and their like all have the same right to life as you or I. In Jewish law, a young patient does not have preference over an old one. In order to preserve a human life, even the Sabbath or the Day of Atonement may be desecrated and all other rules and laws, save the above three, are suspended for the overriding consideration of saving a human life. The corollary of this principle is that one is prohibited from doing anything that might shorten a life even for a very short time since every moment of human life is of infinite value.

How are these basic principles applied when a physician is confronted with the following dilemma? His extremely ill patient will, under normal circumstances, die shortly, perhaps in a few days or weeks. His patient's only chance for survival is dangerous experimental surgery or therapy. However, if the surgery or therapy fails to heal, the patient will die immediately. What should the physician do? Should he risk the definite short period of life remaining for the patient by administering the drastic remedy in the hope that the patient may be cured and live a prolonged period? In other words, should the physician abandon the *definite* short life span of the patient in favor of the *possible* significant prolongation of his life?³

In his famous *Responsa*⁴ Rabbi Moshe Feinstein states that one is permitted to submit to dangerous surgery even though it may hasten death if unsuccessful, because of the potential, however small, of the operation being successful and effecting a cure. In his most recent collection of *responsa*, however, R.

3. Rosner, F. "Jewish Ethical Issues in Hazardous Medical Therapy." *Tradition*, 1981, 19: 55-58.

4. *Iggerot Moshe, Yoreh Deah*, part II, 58:.

Feinstein rules that if the surgery might hasten his death if it does not heal him, the patient should not be subjected to it. Only when there is at least a fifty-fifty chance of success must the sick person undergo the treatment.⁵ He cautions that forcing a person to undergo this treatment may arouse such anxiety as to cause his death, which would render it an act of murder.⁶ However, he does not cite the reasoning or precedent on which he relies. Israel's former Chief Rabbi, Shlomo Goren, writes that one should use hazardous experimental therapy not only in a case where the patient will certainly die without the medical or surgical therapy but also where the possibility exists of prolonging the patient's life by the therapy.⁷ Britain's Chief Rabbi, Immanuel Jakobovits, also agrees that hazardous therapy may be applied to patients if it may be potentially helpful to the patient, however remote the chances of success are.⁸

Two earlier rabbinic sources also clearly enunciate the Jewish legal view concerning hazardous therapy for the dying. Rabbi Chaim Ozer Grodzinski was asked about the permissibility of performing a dangerous surgical procedure on a seriously ill patient. He answered that if all the attending physicians, without exception, recommend such an operation, it should be performed, even if the chances for success are smaller than those for failure (*Responsa Achiezer, Yoreh Deah* #16:6). A similar pronouncement is made by Rabbi Jacob Reischer with regard to dangerous medical therapy for a seriously ill patient. He permits such therapy since it may cure the patient although it may hasten the patient's death (*Responsa Shevut Yaakov*, Section 3 #75). Rabbi Reischer also requires a group of physicians to concur in the decision.

Do heroic or extraordinary measures constitute impediments to dying? How does one define heroic measures? What may be

5. *Iggerot Moshe, Choshen Mishpat*, part II, 74:5.

6. *Ibid.* 73:5.

7. Goren, S. *Shanah BeShanah*, Jerusalem, Hechal Shlomo, 1976, pp. 149-155.

8. Jakobovits, I. "Medical Experimentation on Humans in Jewish Law," in *Jewish Bioethics*. Ed. F. Rosner and J.D. Bleich, New York, Hebrew Publ. Co. 1979, pp. 377-838.

considered heroic for Karen Ann Quinlan (e.g., use of antibiotics to treat pneumonia) may be standard therapy for an otherwise healthy person. When, if ever, may treatment be withheld? May a terminally ill patient request that his agony not be prolonged? Must a patient in deep coma but breathing without mechanical assistance be afforded all the care and concern due any ill person including hydration via intravenous infusion, antibiotics to treat infections, and optimum care to maintain good kidney, liver and cardiac function? Jewish tradition answers the latter question in the affirmative in view of the supreme value of human life whose preservation takes precedence over virtually all other considerations. Human life is not regarded as a goal to be preserved as a condition of other values but as an absolute basic good.

The basic tenet of Judaism is the supreme value of human life. This principle is based in part upon our belief that man was created in the image of G-d. Therefore, when a person's life is in danger, even when there is no hope for survival for a prolonged period but only for a very short time, all commandments of the Torah are set aside. Any act which can prolong life supercedes all the biblical commandments, except the three cardinal ones. However, Rav Feinstein has recently ruled that if a person is in great pain, he does not have to undergo treatment that will extend his life but not alleviate the pain.⁹ Also, he cannot be forced to accept intravenous feeding.¹⁰ For the patient who has difficulty breathing, Rav Feinstein counsels giving only enough oxygen to alleviate pain for a short while, then removing the equipment to see if the patient is still alive. Apparently, he does not consider it necessary to keep the patient artificially breathing and thus prolong his dying — but enough should be given to prevent pain to him.¹¹

Definition of Death

The definition of death in Jewish law¹² is first mentioned in

9. *Iggerot Moshe, Choshen Mishpat*, part II, 75:1.

10. *Ibid*, 74:3.

11. *Ibid*, 73:2.

12. Rosner, F. "Definition of Death in Jewish Law." *New York State J. Med.* 1983, 83: 973-978.

the Talmud. The Mishnah in *Yoma* 8:6-7 enumerates circumstances under which one may desecrate the Sabbath:

Every danger to human life suspends the [laws of the] Sabbath. If debris [of a collapsing building] falls on someone and it is doubtful whether he is there or whether he is dead, or if it is doubtful whether he is alive or whether he is dead, or if it is doubtful whether he is an Israelite or a heathen, one must probe the heap of the debris for his sake [even on the Sabbath]. If one finds him alive, one should remove the debris, but if he is dead, one leaves him there [until after the Sabbath].

The Talmud (*Yoma* 85a), commenting on the above Mishnah, states as follows:

...How far does one search [to ascertain whether he is dead or alive]? Until [one reaches] his nose. Some say: Up to his heart ... life manifests itself primarily through the nose as it is written: "In whose nostrils was the breath of the spirit of life" [Genesis 7:22] ...

Rashi explains that if no air emanates from his nostrils, he is certainly dead. Rashi further explains that some people suggest the heart be examined for signs of life, but the respiration test is considered of greatest import.

The Palestinian Talmud (*Yoma* 8:5) quotes certain authorities who require "until one reaches the navel" but this is a minority viewpoint.

The above rule from the Mishnah is codified by Rambam (Book of Seasons; Laws of the Sabbath 2:19) as follows:

If, upon examination, no sign of breathing can be detected at the nose, the victim must be left where he is [until after the Sabbath] because he is already dead.

In the *Shulchan Aruch* (section *Orach Chayim* 329:4) we find:

Even if the victim was found so severely injured that he cannot live for more than a short while, one must probe [the debris] until one reaches his nose. If one

cannot detect signs of respiration at the nose, then he is certainly dead whether the head was uncovered first or whether the feet were uncovered first.

Neither Rambam nor the *Shulchan Aruch* seem to require examination of the heart or navel, both mentioned as minority opinions in the Babylonian and Palestinian Talmuds, respectively. Cessation of respiration seems to be the determining physical sign for the ascertainment of death.

Another pertinent passage found in the *Shulchan Aruch* (Ibid. 33:5) states as follows:

If a woman is sitting on the birthstool [i.e., about to give birth] and she dies, one brings a knife on the Sabbath, even through a public domain, and one incises her womb and removes the fetus since one might find it alive.

Rabbi Moses Isserles (*Ramo*) adds to this statement:

However, today we do not conduct ourselves according to this [rule] even during the week [i.e., even *not* on the Sabbath] because we are not competent to recognize precisely the moment of maternal death.

Several commentators explain that Ramo is concerned that perhaps the mother only fainted and incising her abdomen might kill her. Maimonides, five centuries earlier, had already raised the problem of fainting complicating the recognition of death, when he stated (Book of Judges, Laws of Mourning 4:5):

Whosoever closes the eyes of the dying while the soul is about to depart is shedding blood. One should wait a while; perhaps he is only in a swoon.

Both Rambam and Ramo, however, agree that the talmudic description of death for all practical purposes is the absence of cessation of respiration.

Recent rabbinic opinions support the classic Jewish legal definition that death is established when spontaneous respiration ceases. Since respiration was thought to be dependent upon cardiac

activity, the definition would thus include absence of a heartbeat. Such an opinion was first expressed by Rabbi Moses Schreiber (Responsa *Chatam Sofer*, *Yoreh Deah* #338) who asserts that if a person is motionless like an inanimate stone and has no palpable pulse either in the neck or at the wrist, and also has no spontaneous respiration, his soul has certainly departed, but one should wait a short while to fulfill the requirement of Maimonides (*vide supra*) who was concerned that the patient may only be in a swoon. Rabbi Sholom Mordechai Schwadron (Responsa *Maharsham* Vol. 4, Sect. 6 #124) states that if any sign of life is observed in limbs other than the heart and lungs, the apparent absence of spontaneous respiration is not conclusive in establishing death.

On the other hand, Rabbi Isaac Yehuda Unterman, addressing the Eleventh Congress on Jewish Law in Jerusalem in August 1968, stated that one is dead when one has stopped breathing. Most talmudic and post-talmudic Sages agree that the absence of spontaneous respiration is the only sign needed to ascertain death. A minority would also require cessation of heart action. Thus a patient who has stopped breathing, says Rabbi Unterman, and whose heart is not beating, is considered dead by Jewish law.

Rabbi Eliezer Yehuda Waldenberg (Responsa *Tzitz Eliezer* Vol. 9 #46; vol. 10 #25 and Vol. 13, Sect. 89:12-13) also defines death as the cessation of respiration and cardiac activity. One must use all available medical means to ascertain with certainty that respiratory and cardiac functions have indeed ceased. A flat electroencephalogram in the face of a continued heartbeat is not an acceptable finding by itself to pronounce a patient dead. Even after death has been established one should wait a while before moving the deceased. Rabbi Waldenberg cites a work entitled *Divrei Shaul* in which the author states that "it is clear to me like the sun that if we observe a patient and he appears dead, and has no respiration and no heartbeat which are the signs of life as explained in tractate *Yoma*, he is not alive any more and has the [legal] status of a dead person in all respects." Rabbi Waldenberg also discusses the issue of whether the seat of the soul resides in the heart or in the brain and cites Rabbi Zvi ben Yaakov Ashkenazy, known as *Chacham*

Tzvi (Responsum #77) who pointed out that this issue has been argued since the times of Galen, whose opinion was that the brain is the source of life, and Aristotle, who considered the heart to be more important than the brain.

Rabbi Moshe Feinstein (*Responsa Iggerot Moshe, Yoreh Deah, Part 2* #146 and #174:2) states that if the brain is not functioning, death will occur because breathing will stop. Until the latter occurs, physicians may be able to resuscitate the patient or prayers to G-d may avail. Hence, if one kills someone with no brain function who is still breathing, it is murder. The Talmud and codes of Jewish law do not indicate, continues Rabbi Feinstein, that the signs of life are in the brain, and it is illogical to say that the nature of man has changed since, even in talmudic days, the brain controlled all life-sustaining functions [i.e., respiration] and yet, cessation of brain activity was not considered to be the definition of death. In a patient without spontaneous respiration or heartbeat but with some electrical activity on an electroencephalogram, the rare possibility of resuscitation must be reckoned with. Although the respiration test is paramount, it is clear that "the nose is not to the organ which gives life to a human being, nor is it the organ of respiration; rather the brain and the heart give life to man." The nose is the easiest place to recognize the presence of this life, concludes Rabbi Feinstein, since a very weak pulse may not be detectable and brain activity is not easily measured on physical examination alone.

A similar conclusion is expressed by Rabbi Immanuel Jakobovits¹³ who states, in part, that "the classic definition of death as given in the Talmud and Codes is acceptable today and correct. However, this would be set aside in cases where competent medical opinion deems any prospects of resuscitation, however remote, at all feasible."

Rabbi Aaron Soloveichik,¹⁴ in a very novel approach, states

13. Jakobovits, I. Personal communication, August 1, 1968.

14. Soloveichik, A. "The Halakhic Definition of Death," in *Jewish Bioethics* F. Rosner and J.D. Bleich, editors. New York. Sanhedrin Press (Hebrew Publ. Co.) 1979. pp. 296-302.

that death is a process which begins the moment spontaneous respiration ceases and ends when all bodily functions emanating from the controlling center, i.e., the brain, end. This means that:

When a person in whom death is imminent becomes devoid of respiration but other bodily functions such as the brain are potentially operative, such a person is no longer completely alive but he is not yet dead: death has begun but the death process is not complete until the brain and heart completely cease to function. During this period, a person is in a state of semi-living, not fully alive but not fully dead. Anyone who kills such a person or who hastens his death is, therefore, guilty of murder. This is the reason why Maimonides rules that one is not allowed to move a dying person while his soul is departing until after one waits awhile. Maimonides refers to a person who is motionless and who has no spontaneous heartbeat or respiration. One must wait half an hour because his brain may still be operative and the patient potentially resuscitable. This "dying" person is in a semi-living state and, therefore, one is prohibited from doing anything which may hasten his death.

Rabbi J. David Bleich¹⁵ traces the Jewish legal attitude concerning the definition of death from talmudic through recent rabbinic times. He posits that brain death and irreversible coma are not acceptable definitions of death insofar as Jewish law is concerned since the sole criterion of death accepted by Jewish law is total cessation of both cardiac and respiratory activity. Even when these indications are present there is a definite obligation to resuscitate the patient if at all feasible. Rabbi Bleich¹⁶ also discusses the various "Time of Death" statutes already enacted into law in many states in this country and statutes being contemplated by other states. These statutes supplant the classical definition of

15. Bleich, J.D. "Establishing Criteria of Death," in *Contemporary Halakhic Problems*. New York, Ktav 1977 pp. 372-393.

16. Bleich, J.D. "Time of Death Legislation." *Tradition* 1977, 16: 130-139.

death with more flexible criteria. Rabbi Bleich voices concern about the fact that it is unlikely that Jewish opinion can succeed in stemming the legislative tide indefinitely. It is also unrealistic to believe that time of death statutes will accurately reflect even the most liberal of Jewish legal opinions.

Several Jewish physicians¹⁷ well-versed in talmudic law and rabbinic writings have written in detail about the Jewish legal definition of death. They essentially conclude that today one requires all three criteria cited by the *Chatam Safer* (*vide supra*), namely absence of spontaneous respiration and absence of a heartbeat in a patient who appears dead, i.e., is "motionless like an inanimate stone."

Rabbi Moshe David Tendler¹⁸ introduced the concept of brain stem death as an acceptable criterion for the definition of death even if cardiac function has not ceased.

His contention that "complete and permanent absence of any brain-related vital bodily function is recognized as death by Jewish scholars" is supported by a recent pronouncement of Rabbi Moshe Feinstein (*Responsa Iggerot Moshe, Yoreh Deah, Sect. 3 #132*) who states that if by injecting a substance into the vein of a patient, physicians can ascertain that there is no circulation to the brain, meaning no connection between the brain and the rest of the body, that patient is legally dead in Judaism because he is equivalent to a decapitated person. Where the test is available, continues Rav Feinstein, it should be used.

Rav Tendler's arguments generated considerable discussion

17. Levi, Y. "That which Prevents the Departure of the Soul." *Noam* (Jerusalem) 1963, 16: 53-63.

Rabinowitz, G.A. and Koenigsberg, M. "The Halachik Definition of Death in the Light of Medical Knowledge." *Hadarom* (New York) #32 (Tishri 5731), 1971 pp. 59-76.

Steinberg, A. "Establishing the Moment of Death." *Noam* (Jerusalem) 1977, 19: 210-239.

Abraham, A.S. "Treatment of Gossess and the Determination of Death," in *Halakha and Medicine* Vol. 2, M. Hershler (Edit.). Jerusalem — Chicago. Regensberg Institute, 1981 pp. 185-190.

18. Tendler, M.D. "Cessation of Brain Function: Ethical Implications in Terminal Care and Organ Transplant." *Ann. N.Y. Acad. Sci.* 1978, 315: 394-397.

and controversy. Rabbi Aaron Soloveichik¹⁹ attacked his position as a serious misinterpretation of Jewish law, an attack refuted by Rabbi Tendler himself.²⁰ However, an opposing viewpoint of some physicians concerning brain death²¹ asserted that "cessation of total brain function, whether irreversible or not, is not necessarily linked to total destruction of the brain or to the death of the person. Further, to take vital organs or to otherwise treat people as though they were dead already on the basis of these recent criteria is morally unacceptable to most Orthodox Jews and Christians."

In summary, all rabbis agree that the classic definition of death in Judaism is the absence of spontaneous respiration and heartbeat in a patient with no bodily motion. A brief waiting period of a few minutes to a half hour after breathing has ceased is also required. In the present era, when it is recognized that hypothermia or drug overdose can result in depression of the respiratory center with absence of spontaneous respiration and even heartbeat, this classic definition of death is insufficient. Hence, wherever resuscitation is deemed possible, no matter how remote the chance, it must be attempted. Cerebral death is not generally accepted by rabbinic scholars to be a criterion for establishing death other than to confirm death in a patient who already has irreversible absence of spontaneous respiration and no heartbeat. The only exception may be the situation of decapitation where immediate death is assumed even if the heart may still be briefly beating.

The Living Will

The living will is a recently-adopted method in some jurisdictions of the United States that would recognize the right of an adult person to prepare a written directive instructing his physician to withhold life-sustaining procedures in the event of the patient's incompetence to do so while in a terminal condition. The

19. Soloveichik, A. "Jewish Law and Time of Death." *J.A.M.A.* 1978, 240:109.

20. Tendler, M.D. "Jewish Law and Time of Death." *J.A.M.A.* 1978, 240:109.

21. Byrne, P.A., O'Reilly, S., and Quay, P.M. "Brain Death — an Opposing Viewpoint," *J.A.M.A.* 1979, 242: 1985-1990.

living will is designed to promote patient autonomy while removing onerous decision-making from physicians and the patients' families. Experience with the living will indicates that it can either help or hinder clinical decision-making.²²

If the patient changes his mind during the period when the living will is in effect, yet fails to formally rescind the declaration, it may be activated without proper "informed consent." Moreover, since intractable pain is often a major cause for activating the living will, medical science may by then have developed better methods to deal with such pain. A patient who signs a living will thinks that he is opting for a painless, conscious, dignified, decent, comfortable, peaceful, natural death. In fact, what the patient perceives as his "right to die" may backfire.²³ The living will only protects refusal of treatment but does not guarantee a peaceful easy death.

In essence, Judaism is opposed to the concept of the living will in that the patient may not have the "right to die." Only G-d gives and takes life. Man does not have full title over his life or body. He is charged with preserving, dignifying and hallowing that life. However, we have noted that in certain cases it is not required to prolong the suffering, and the patient may refuse treatment under certain circumstances.²⁴

Concluding Remarks

The complexities of the issues relating to death and dying, mercy killing, withholding treatment, heroic measures, discontinuation of life support systems, and the living will, among others, are such that it is difficult to specify the halacha in general terms, and each situation must be studied individually. Jewish law requires the physician to do everything in his power to prolong life, but does not mandate the use of measures that prolong the act of dying. In

22. Eisendrath, S.J. and Jonsen, A.R. "The Living Will. Help or Hindrance?" *J.A.M.A.* 1983, 249: 2054-2058.

23. Battin, M.P. "The Least Worst Death." *Hastings Center Rep.* 1983, 13:

24. *Iggerot Moshe, Choshen Mishpat*, part II, 74:5.

Jewish law and moral teaching, "the value of human life is infinite and beyond measure, so that any part of life — even if only an hour or a second — is of precisely the same worth as seventy years of it, just as any fraction of infinity, being indivisible, remains infinite. Accordingly, to kill a decrepit patient approaching death constitutes exactly the same crime of murder as to kill a young, healthy person who may still have many decades to live ..." ²⁵

Euthanasia is opposed without qualification in Jewish law, which condemns as sheer murder any active or deliberate hastening of death, whether the physician acts with or without the patient's consent. Some rabbinic views do not allow any relaxation of efforts, however artificial and ultimately hopeless, to prolong life. Others, however, do not require the physician to resort to "heroic" methods, but sanction the omission of machines and artificial life support systems that only serve to draw out the dying patient's agony, provided, however, that basic care such as food and good nursing is provided. An organ may not be removed for transplantation until the patient has been pronounced dead, defined in Judaism as the cessation of spontaneous respiration and heartbeat in a patient where resuscitation is deemed impossible. Specifically questioned about the Karen Ann Quinlan case, most rabbis offered the opinion that in Jewish law we are not required to utilize heroic measures to prolong the life of hopelessly sick patients, but we are forbidden to terminate the use of such measures once they have been begun.

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The modern phrase "quality of life" or "quality of existence" embodies within it a concept of worthiness with connotations of personal character and social status. Emotional and financial burdens are frequently cited as justification for decisions about "heroic" measures; suffering of the family is another reason offered for allowing a patient to die by removing artificial life supports. On this basis, the sanctity of life as a pre-eminent value is being threatened. Evil has small beginnings. When the quality of life replaces the sanctity of life, society has done itself irreparable harm.

25. See reference #8 above.

Homosexuality and Judaism

Rabbi B. Freundel

Introduction

Homosexuality, once a word whispered only with revulsion or derision, is now out in the open for all to see and hear. In fact, homosexuality and its attendant issues have become big news. Whether it is the rapidly spreading, and ever-more frightening AIDS epidemic, or the increase in sympathetic "gay" characters in the theatre and in literature, or the widening legal battles over the status of homosexuals, one cannot go very far in contemporary society without confronting this once extremely closet-bound topic. Traditional Judaism, too, has been forced to confront the issue as "gay" individuals and "synagogues" have appeared on the Jewish landscape, often appealing for support from the liberal segments of the Jewish community.

Certainly, an authentic Jewish response must begin with the biblical prohibition against homosexuality. The Bible unequivocally states that a homosexual act between two consenting adult males is a capital crime.¹ Therefore, homosexuality is an activity that no traditional Jew can engage in, endorse, accept, or approve of (recent televised statements to the contrary notwithstanding).²

1. Levit. 18:22 and 20:13.

2. On WNBC TV's "Donahue" show during a discussion of the controversial Harvey Milk High School for homosexual students, June 12, 1985.

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Despite this initial biblical negative, there is much to discuss regarding our attitude to the homosexual, the issue of the homosexual's place in the community, the question of approach to and the treatment of the homosexual, and the problem of the homosexual's rights and acceptance in society. In addition, we must consider why the Bible and Jewish thought reject homosexuality, keeping in mind as we do that female homosexuality, though forbidden, is not nearly as serious a crime as is its male counterpart.³

Drawing the Right Picture

Our analysis of Judaism's approach to homosexuality begins with the question, "What is Judaism's view of the Jewish homosexual?" It is this author's contention that the only appropriate answer to this question is "there is no such individual."⁴

To explain this rather radical statement, one must go back to the structure that halacha places upon Jewish society. In this structure there are certain legal personalities who constitute the *dramatis personae* of the Jewish community. A Cohen is such a personality, as is a Levi. A woman is such a personality, as is a slave or a king. Other "characters" populate the Jewish landscape. The *mamzer* and the *Cohen Gadol*, the *Katan* and the *gadol*, the

3. See below for sources.

4. Spero, M.H., in (a) "Homosexuality: Clinical and Ethical Challenges", *Judaism and Psychology Halakhic Perspectives*, Yeshiva University, New York, 1980 and (b) "Further Examinations of the Halakhic Status of Homosexuality", *Proceedings of the Association of Orthodox Jewish Scientists*, vol. 7, 1983, disagrees with this position and claims that a homosexual personality, as defined by desires, orientation and lifestyle does exist, and that this state is intrinsically prohibited. In addition to the philosophical problems discussed in the article that arise from this position, there is an even more serious problem with his approach. The sources that Spero uses to support his position, *Torah Temimah* to Gen. 2:24, *Sanhedrin* 58a, T.J. *Kiddushin* 1:1, all deal with Gentiles. Although anything forbidden to Gentiles is forbidden to Jews, the prohibition against existing in a homosexual state cannot apply to Jews if the state does not exist for Jews. At best Spero has supported the idea of a homosexual subgroup in Gentile society. See below for discussion.

cheresh and the *shoteh* each has his place in the scheme of things.⁵ Lacking from this list is the homosexual. So much is he missing from the cast of characters of Jewish society that one is hard put to find a halachic term used specifically for him.⁶

If one were, in fact, to apply a halachic category to this individual, it would be the general category of *mumar l'teiavon* (one whose desires put him in opposition to Torah law), specifically *mumar l'mishkav zachor* (one who because of his repeated involvement in homosexual activity is in opposition to Torah law). Such a category exists in halachic literature,⁷ is clearly defined, and places the homosexual on an equal footing with other *mumarim* who violate other laws.

5. cf. the *Mishnayot* in the third chapter of Tractate *Horiyot* and the *Mishnayot* in the eighth chapter of *Yevamot*. The categories of individuals mentioned here are *Cohen*—priest, *Levi*, *mamzer*—product of an adulterous or incestuous marriage, *Cohen Gadol*—high priest, *katan*—child, *gadol*—adult, *cheresh*—deaf-mute, *shoteh*—mentally incompetent. This list is by no means complete.

6. *Roveia* (c.f. *Sanhedren* 9b) refers to only one aspect of the homosexual act and is also used for other sexual acts, e.g. bestiality (Levit. 18:23 and Mishna *Sanhedrin*, 1:4), and intercourse between animals (Levit. 19:19 and *T.J. Avodah Zarah* 40a). A. Even-Shoshan, *HaMilon Hehadash*, s.v. עבָר, sees this first meaning as the primary and original meaning of the term. Interestingly R. Ishmael (*Sanhedren* 54b) requires a different verse (Deut. 23:18) to warn the “female” participant in the homosexual act than the verse (Levit. 18:22) which warns the “male” participant. As a result if an individual plays both roles at one time he is punishable for two sins. R. Akiba disagrees and allows an alternate reading of the verse in Levit. to serve as warning for the “female” participant, and consequently holds that an individual who plays both roles at once is punishable only once. It seems that R. Ishmael, certainly, and R. Akiba, probably, saw the two types of activity as being different. This strikes another blow against “*Roveia*” being a term for a homosexual and another blow against one who would want to suggest that the rabbis did recognize a homosexual personality. If there are two types of actions involved and two different verses or readings needed to cover them, there can not be a homosexual in Jewish law. If there were such an individual one verse should be sufficient. Other possible terms such as *Shochev Im Zecharim* or *Shochev Mishkivei Isha* are awkward and do not appear in colloquial usage. The modern transliteration of homosexual into Hebrew only proves the point that no term exists.

7. See *Avodah Zarah* 26b, *Hulin* 5a, *Horiyot* 11a, *Rambam Yad, Hilchot Teshuva* 3:9 and *Kesef Mishneh* ad. loc., *Shulchan Aruch, Yoreh Deah* 2, and *Choshen Mishpat*, 266:2. Some might argue that homosexuals who are exclusively

It seems clear from this that halacha never viewed the homosexual as a member of a unique category or as different from the non-homosexual. He has no greater or lesser rights or obligations. He deserves no special treatment or concessions nor any special vilification. In fact, the term "homosexual" is an essentially inappropriate description for him. We should, rather, refer to this individual as a person engaged in homosexual activity. "Homosexual" is therefore not a noun that identifies and categorizes the individual but an adjective that describes his activity.

This approach has great intuitive appeal. It is hard to imagine Jewish thought accepting the premise that sexual desires and activities provide grounds by which to define an individual's place in the community. In addition, there are vast and important ramifications that emerge from this picture of the individual as a person involved in homosexual activity and not as a homosexual.

The first effect of this changed conceptualization is to alter and improve the individual's perception of himself. If one is labelled and defined by the term "homosexual", he is consequently different than the heterosexual. As such, he will struggle for minority status and for his rights as a member of that minority. He is, and should be, portrayed as a unique character type in movies, theater, and on television, and he should command an appropriate number of participants in any institution that constitutes itself along racial, ethnic, and religious lines. He agitates for gay pride and gay power, and if he is Jewish, he creates gay synagogues and other gay institutions.

homosexual are actually *Mumarim L'hachis* (following Rashi *A.Z.*, ad. loc., sv. *L'Teiavon*). Although some militant homosexuals may come close to this definition, the emotional conflicts and extenuating circumstances involved make it difficult to describe most, if any, homosexuals as having actively chosen to reject permissible sexual relations for forbidden ones in the same way that Rashi describes the *Mumar L'hachis*' behavior regarding non-kosher meat. Even if one could define some or all homosexually oriented individuals as *Mumarim L'hachis* the comment of the *Chazon Ish* quoted in the next footnote would allow us to treat such an individual in the same way that we would treat a *Mumar L'Teiavon* i.e. like any other Jew (see *Kesef Mishneh* loc. cit.).

On the other hand, if "homosexual" is a term that is limited to the description of an activity, then the individual practicing this activity remains an undifferentiated member of society, and if Jewish he is part of Jewish society. He need not feel irreparably and irretrievably stigmatized. Above all, he need not feel excluded from the community. In the same way that the adulterer, the practitioner of pre-marital sex, the *mechallel Shabbat*⁸, or the speaker of *lashon harah* all enter the synagogue and feel at home while individually dealing with whatever guilt they carry as a result of their sinful activities, so, too, the individual involved in homosexual activity can and should enter the synagogue and feel himself to be part of the community. He is still a human being and a Jew. He is most assuredly not part of a separate homosexual society or sub-society. (See below for a discussion of the Gentile homosexual.) Obviously, the adulterer, *mechallel Shabbat*, et al are duty-bound to change their ways — to do *teshuva* — and the *mumar l'mishkav zachor* has the same obligation.⁹

The second implication of this approach concerns the community's dealings with the individual involved in homosexual activity. If the practitioner of homosexuality is considered a full-fledged Jew (albeit a *mumar*), the community should welcome him as such. This is particularly true in our post-holocaust era, wherein our heightened awareness of the value of each Jewish soul has motivated many communities to make *kiruv rechokim* (attempts to bring non-observant Jews into the fold of Torah-observance) a

8. It is well known that if one violates the Sabbath in public there is a serious stigma attached (see *Hulin* 5a-6b and *Eruvin* 69a.). However, the equating of the Sabbath desecrator and the idolator is rarely applied in any more than a pedagogic sense in contemporary halachic literature (see R. Moshe Feinstein, *Iggerot Moshe, Orach Chaim*, 1, No. 23 and especially 1, No. 33). In addition to R. Feinstein's lenient stance on *Mechallelei Shabbat*, the *Chazon Ish*, *Yoreh Deah* 2:16, says that the stringent treatment of transgressors described in the Talmud does not apply today, as such treatment will cause greater abandonment of Judaism. Since our task is to improve the situation and not to make it worse, the only approach to take with sinners is "to bring them back with ropes of love." This statement from the *Chazon Ish* could serve as the central message of this article.

9. Rambam, *Sefer Hamitzvot* Positive Commandment, No. 73.

hallmark of their activities. This *kiruv* work should not and cannot be limited only to violators of halacha in ritual matters. Deviance from halachic norms in sexual matters is as much an area for concern, outreach, and proper education as anything else. Particularly in an area that is as difficult to control as sexual desire,¹⁰ the support of the community for one who might want to bring his lifestyle in line with halacha may be crucial to success.

At this point something should be said about the term “*toeivah*”¹¹ as used by the Torah in connection with homosexuality. Some may feel that its appearance in this context precludes treating the practitioner of homosexuality in the same way that one would treat an individual who is guilty of a different sin. The problem with this suggestion is that to be consistent we would require similarly negative treatment of the person who eats non-kosher food¹², the idolator¹³, the unethical business man¹⁴ and the individual who remarries a woman who, since her divorce from him, has entered and left (by death or divorce) another marriage to another man¹⁵. All of these individuals are guilty of committing a *toeivah*, according to the respective verses that prohibit the particular activity. If we are going to ostracize the individual who commits homosexual acts, then we must ostracize these individuals as well. Since we do not take this approach in the other cases, we should not do so in dealing with the individual involved in homosexual activity.

How then to understand the *toeivah* designation? In an article

10. אֲקָן אַפְוֹתָופָס לְעַרְיוֹת, “There is no guardian against unchastity” (*Ketubot* 13b and *Hulin* 11b), or the even more dramatic, אֲקָן מִנְנִין שְׁבַחֲסִירִים אֲקָן חַסִידִים, “Even the most pious of the pious is not appointed guardian over unchastity” (*TJ Ketubot* 1,8). See also Rambam, *Issurei Biah*, 2:19, that inappropriate sexual behaviour will occur from time to time in all communities because of man’s extreme desire for sexual matters.

11. Levit. 18:22 and 20:13.

12. Deut. 14:3.

13. Deut. 7:25-26 and 27:15

14. Deut. 25:16. Parenthetically, it would be interesting to see the stigma presently attached to homosexuality placed on anyone guilty of unethical business practices—at least for a brief time.

15. Deut. 24:4.

in the *Encyclopedia Judaica Yearbook*, Dr. Norman Lamm¹⁶ defines *toeivah* in aesthetic terms. These actions are repulsive in and of themselves; no rationale or explanation is necessary. Rather, the divine aspect within the human being is automatically and instinctively repelled by these activities. The fact that any number of individuals are possessed of a deadened spiritual sensitivity that allows them to accept or even participate in the acts in question, does not mean that the spiritually sensitive individual allows his revulsion to be diminished nor does he apologize for that revulsion.

Further, it is important to note that the wording of the verses in question indicates that this revulsion is directed only at the act and not at its perpetrator. The perpetrator is not to be ostracized. One who commits a *toeivah* is halachically and societally no different than one who commits a transgression of a non-*toeivah* law of equal severity.

Although it may be true that a leopard cannot change its spots, Judaism holds that a human being can change or control his activities.¹⁷ While we certainly recognize that many individuals have personality factors that would tend to promote certain sinful activities, our expectation is that these individuals will control these tendencies. We no more would accept the act of murder as legitimate because the perpetrator is prone to violence, than we should accept the act of homosexuality as inevitable because of the existence of biological, genetic, or environmental factors that may contribute to an individual's preference for homosexual acts. A rational individual can control himself, and no amount of apologetics, explanations, or rationalizations can change this fundamental fact. Simply put, the individual engaged in homosexual activity is wrong in what he is doing and is held responsible for having done it.

It is on this issue that the approach presented here parts company most completely with Dr. Lamm's view. Whereas Dr.

16. "Judaism and the Modern Attitude to Homosexuality," *Encyclopaedia Judaica Yearbook* 1974, Keter, Jerusalem, 1974, p. 198.

17. The concept of *Teshuva* makes no sense without this premise.

Lamm¹⁸ sees the homosexual as an *anuss* (an individual forced by heredity and/or environment into activity that the Bible forbids), this author sees him as *mumar*. Whereas Dr. Lamm effectively removes culpability from him (רַחֲמָנוּ פָּטָרֵינוּ¹⁹), this author insists that creating a sense of culpability is an integral part of the approach that Judaism should take in confronting the individual involved in homosexual activity. This sense of culpability may be just the push necessary for the individual to begin the *teshuva* process.

The view presented here seems more in keeping with biblical,²⁰ talmudic,²¹ and other halachic sources.²² The consistent position taken by these sources is that the homosexual is ultimately subject to punishment for his actions. The halachic system fully expects that an individual properly warned, witnessed, and brought to trial for this act be killed. There is no indication anywhere in the literature that such individuals have a *prima facie* defense as *anussim*.

Dr. Lamm²³ supports his approach by arguing that present public policy and social reality preclude punishment of all

18. Ibid pg. 202. See also Matt. H.J., "Sin, Crime, Sickness or Alternative Lifestyle? A Jewish Approach to Homosexuality", *Judaism*, vol. 27 No. 1 Winter 1978, and Bleich, J.D., *Judaism and Healing, Halakhic Perspectives*, Ktav, New York, 1981. Bleich comes closest to the view presented in this article on the homosexual as *anuss* (forced). However, "*mumar*" (sinner) as opposed to "*anuss*" is the term to be used in the discussion of homosexuality. Introducing "*oness*" (compulsion) in a discussion of homosexuality is as appropriate as introducing it to a discussion of murder. There are murderers who are *anussim* (psychopathological murderers), but a discussion of these individuals is not a discussion of murder or the Jewish attitude to that crime. Yet we continue to speak of *anussim* (psychopathological homosexuals), who may make up only a small portion of those involved in that activity, in regard to Judaism's general view on the subject.

19. *Bava Kama* 28b, *Avodah Zarah* 54a, *Nedarim* 27a. Spero, op. cit., (b) also rejects the *anuss* position on these and other grounds.

20. Levit. 20:13

21. e.g. *Sanhedrin* 9b and 54a

22. Rambam, *Yad.*, *Hilchot Issurei Biah* 1:14.

23. Ibid pp. 203-204.

offenders. We must, therefore, maintain our condemnation of the act while refraining from dealing punitively with the offender. In his view, this can best be done by treating the offender as an *anuss*.

However, there is nothing in his argument that prevents our labelling the individual as a *mumar*. We do not punish Sabbath violators, or those who eat *treif*. Environment/heredity is not enough to label the individual involved in homosexual activity an *anuss*. Rather label him a *mumar*, indicating that he is responsible for his actions.

Further, a stance such as Dr. Lamm's seems to carry with it the possibility of pushing the individual presently questioning his own sexual orientation over the wrong edge. After all, if biology/upbringing is the cause, and the participant is only the victim of irresistible forces, he has a handy excuse and less of a reason not to succumb to his desires.

Labelling one a *mumar* does not necessarily mean that the community should respond with public condemnation and rejection of the individual. In an era which lacks a Sanhedrin and adequate Jewish communal structures we have long tolerated, worked with, and even welcomed and accepted violators of many halachot within our community. It is necessary, therefore, to couple our tolerance of the individual with disapproval of the activity. This must then be combined with an expectation and hope that the individual will change his behavior. Calling him a *mumar*, if handled correctly, strengthens the chances for change.

The subject of change brings us to our next point. Jewish thought would argue that homosexually-oriented individuals can change their sexual orientation and can ultimately develop an interest in and derive pleasure from heterosexual activity. This conclusion is an obvious consequence of our discussion thus far. If a homosexual act is punishable, and if we expect the individual who has homosexual desires to avoid giving in to them, what then is the life situation of such an individual? There seem to be two possibilities. One: such an individual cannot change his feelings. If this is the case he is a prisoner trapped in a body which, while commanded to marry and procreate, has an emotional structure

that finds such a concept at best unfulfilling and at worst a living purgatory. Two: change — and a normal, happy, fulfilled life in marriage and heterosexual union are possible.

We are told by the Talmud²⁴ that G-d does not play tricks on His creations. Particularly as the area of sexuality is an area of such deeply personal implications to any individual, it is difficult to imagine G-d creating a situation wherein those who feel themselves to possess a homosexual orientation cannot change and are consequently locked in a living prison with no exit and no key. Therefore, some method or methods must exist to successfully change the sexual orientation of motivated individuals. It is heartening to note that a recent study²⁵ indicates a 70% success rate among such individuals. It is unfortunate that the mass media and most mental health professionals publicly portray the goal of "acceptance of one's orientation" as the optimum, while downplaying or denying the possibility of change. Our task must be to publicize the possibility of change, and the relevant statistics that now become statistics of hope. We also should encourage the mental health community to develop new and even more effective methods to alter the sexual orientation of those striving to live a Torah-true lifestyle.

Perhaps one further support for the idea that homosexual orientation is at least preventable, if not totally changeable, is the anomalous fact that the one community in which the percentage of homosexual preference is significantly lower than in the general population is the Orthodox Jewish community.²⁶ It is almost as if

24. אין הקדרש ברוך הוא בא בתרונה עם בריותיו, *Avodah Zarah* 3a.

25. Schwartz, M.F. and Masters, W.H., "The Masters and Johnson Treatment Program for Dissatisfied Homosexual Men", *American Journal of Psychiatry*, 141:2, February, 1984, pp. 173-181. This study shows a remarkable success rate. After 1 year the success rate was 79.1% and after 5 years it was 71.6%.

26. "...except that the (frequency of the) homosexual among Orthodox Jewish groups appears to be phenomenally low", Kinsey, A.C., Pomeroy, W.B., Martin, C.E., *Sexual Behaviour in the Human Male*, W.B. Saunders, Phila., 1948, p. 483. See also Rosenheim, E. "Sexual Attitudes and Regulations in Judaism", in Money, J. and Musaph, H., ed., *Handbook of Sexology, Excerpta Medica*, Amsterdam, 1977, p.1321-22.

halacha rejects the notion of an individual called a homosexual, rejects the necessity of the homosexual act for any individual, rejects the idea of an irrevocable homosexual orientation, and then creates a society in which these ideals can, apparently quite successfully, be lived.

Judaism rejects the suggestions that homosexuality is either a form of mental illness or an "acceptable alternate lifestyle." Judaism's position would be a third and as yet unconsidered option. Homosexuality is an activity entered into volitionally by individuals, who may be psychologically healthy, which is maladaptive and inappropriate. Depending on one's theory, it may indicate arrested development, poor family structure, early trauma, frustration of the purpose of creation, disruption of the basic family structure, unnatural behavior, etc. But whatever the case, it constitutes activity that will diminish an individual's capacity to fulfill, in his own life, G-d's expressed plan for creation. As such, this individual cannot achieve his full potential as a human being.²⁷ Therefore, our task is to treat and redirect this individual to more appropriate and fulfilling activity.

Gentile Homosexuals

One question not addressed directly in the previous section is, "Why does Judaism not recognize the existence of a homosexual sub-group within the Jewish community?"

Of course, one might answer that as the act of homosexuality is forbidden, Judaism would no more grant official status to those who practice it than it would grant such status to murderers, thieves, or adulterers. This answer may, in fact, be sufficient and perhaps we should simply turn to the next section and the discussion of the rationale for Judaism's negative approach to the entire issue of homosexuality.

However, there may be another more profound and far-reaching answer to this question. The *Sifra* states:²⁸

27. See Spero, op.cit., (a), p. 157.

28. To Levit. 18;2.

לא אמרתי אלא בחוקים החקוקים להם ולאביהם ולאבותם
אבותיהם, ומה היו עושים האיש נושא לאיש והאשה לאשה.

I did not say this except for those laws inscribed for them [the Gentiles], their fathers and their fathers' fathers. What did they [the Gentiles, as opposed to the Jews] do? Men would marry men, and women would marry women.

This seems to indicate a difference between homosexuality as practiced in Gentile circles and homosexuality when it makes its appearance in the Jewish community. For the Gentile, homosexuality is a reality that is part of his heritage. For the Jew, homosexuality is a foreign incursion.

Additional support for this division along national lines can be adduced from the prohibition against female homosexuality. This prohibition, though not explicitly stated in the Bible, is derived from the same verse, Leviticus 18:2, that elicits the comment of the *Sifra* quoted above. The verse reads: "After the doings of the land of Egypt wherein you lived you shall not do, and after the doings of the land of Canaan where I am bringing you shall not do, nor shall you walk in their statutes." This source provides a further indication that homosexuality is viewed as a foreign element in Jewish society. It may well be that this factor contributes to halacha's unwillingness to recognize a homosexual sub-group within Jewish society.

Statistics show significantly reduced levels of homosexual men in Orthodox Jewish circles as compared to all other segments of society. Further indication of this anomaly is provided by the dearth of questions relating to homosexuality and individuals involved in homosexual activity in halachic and responsa literature.²⁹

29. *Encyclopaedia Judaica*, s.v. Homosexuality; Lamm, op. cit., p. 197; Epstein, I.M. *Sex Laws and Customs in Judaism*, Ktav, New York, 1948, pp. 64-65, 135. See *Sefer HaChinuch* No. 209 who describes a homosexual prostitute and then says that such an individual is known to us from the Arabs (*Eretz Ha'Yishmaelim*). The *Chinuch* is quoting from Ramban to Deut. 23:18, with one change.

One obvious question remains. Does halacha recognize a homosexual individual who cannot change, and therefore a homosexual sub-community in the Gentile world?

The answer to this question seems unclear. On the one hand the *Sifra* quoted above indicates a belief that at least some Gentile homosexuals develop their sexual orientation because of a traditional cultural heritage. This would tend to support the idea that halacha acknowledges the possibility of a homosexual subgroup in Gentile society.

On the other hand, none of the stories from the Bible, such as the sin of Ham³⁸ the men of Sodom,³⁹ or Potiphar's true purpose in purchasing Joseph as his slave,⁴⁰ portray any of the individuals as totally homosexual. All are either married (in the normal fashion) or are said to father children in the course of their lives. This would seem to indicate that pure homosexuality was considered an aberration even if found in Gentile circles.

Further, halacha prescribes the death penalty for homosexual acts committed between Gentile men.⁴¹ Our tendency would therefore be to deny that halacha recognizes a homosexual community among Gentiles. If we, in fact, did recognize such a community would we not be advocating genocide towards it? Such a position is obviously troubling.

Condemnation of Homosexuality — Why?

In discussions of the Jewish view of homosexuality, the question "Why does Judaism condemn a pleasurable, victimless act that takes place between two consenting adults?" often takes center stage. Although explanations are not lacking in the literature, a truly consistent approach should also shed some light on why

Ramban doesn't mention the Arabs, but he does say that the institution was known from the Egyptians. Both these scholars were obviously unfamiliar with homosexual prostitution—and therefore with institutionalized or extensive homosexuality within the Jewish community. Further compare Rambam, *Yad*, *Hilchot Issurei Biah* 22:2 with 22:5, and (the Gentiles) *כלי חשודין על משבב זכר*, and (the Gentiles) *כלי חשודין על משבב זכר*.

30. *Sanhedrin* 58a, Rambam *Yad*, *Hilchot Melachim* 9:5.

female homosexuality, though forbidden, is far less heinous a crime than male homosexuality.³¹

In fact, a number of suggested answers suffer from a failure to adequately explain this last point.

One such approach centers around the primacy of family and children in our system of values. The practice of male homosexuality obviously frustrates the implementation of these values.³² But so does the practice of female homosexuality. Yet the two are not treated with equal severity.

A second approach argues that homosexuality is somehow unnatural. Our bodies are constructed to act in certain ways, and the practice of male homosexuality perverts these ways.³³ Once again, female homosexuality seems to be every bit as unnatural as the male variety, yet we do not react to it in the same way.

Often, those who advocate these two approaches resort to the "*hashchatat zera*" (destruction of seed) argument. Since male homosexuality involves *hashchatat zera* and female homosexuality does not, the prohibition as violated by the men is more stringent.³⁴

There are two problems with this response. First, it does not adequately explain the treatment of the male participant. *Hashchatat zera* in other contexts does not entail the death penalty.³⁵ However, males involved in homosexual activity (as opposed to females) are subject to capital punishment. *Hashchatat*

31. *Yevamot* 76a, *Shabbat* 65a. Female homosexuality is punished by "Makot Mardut" which is a rabbinic and not a biblical punishment, *Yad, Issurei Biah* 21:8. On the other hand male homosexuality is a capital crime as has been indicated. For a more complete discussion of female homosexuality see Spero, *op. cit.*, (b).

32. *Sefer HaChinuch* No. 209.

33. *Torah Temimah* to *Levit.* 18:22, No. 70.

34. *Sefer HaChinuch*, loc. cit.

35. *Nidah* 13a, *Rambam, Yad, Hilchot Issurei Biah* 21:18, *Shulchan Aruch, E.H.* 23:1-2. There is no question of the seriousness of this sin, but it is not a capital crime to be tried in a human court of law as is homosexuality. See also Feldman, D.M., *Birth Control and Jewish law*, New York University, 1968, chs. 6 and 8, and the debate between him and M. Tendler in *Tradition*, vol. 9, No.'s 1-2 and 4. Even if we accept the view that Er and Onan (Gen. 38) died for the sin of *haschatat zera*, their punishment came at G-d's hands and not in a court of law.

zera, therefore, does not appear to be a significant enough factor to explain this severe reaction on the part of Torah law.

Second, the biblical prohibition concerns the homosexual act and not *hashchatat zera*. In Jewish law, homosexual activity, if consummated, is a capital crime even if there is no *hotzaat zera*, yet male physical contact, even if it results in *hotzaat zera*, is not punishable in this way unless actual sexual consummation occurs.³⁶ For these reasons, the approaches cited seem unable to serve as complete explanations for the Torah view on this issue.

However, one variation on the "unnatural" theme seems to fare better in dealing with our question. This position takes its definition of natural, not from physiology and nature as studied in the laboratory, but from nature as defined in the Torah. The Torah says:

על כן יעזב איש את אביו ואת אמו ורבק באשתו והוא לבשר אחד.

Therefore shall a man leave his father and his mother and cleave to his wife and they shall be as one flesh.³⁷

The Torah has, in this verse, defined "natural" as man and woman united in heterosexual union. Any person engaged in homosexual activity acts against G-d's natural order of things, and is therefore culpable. However, women involved in homosexuality are less in violation of the "natural" than men, as *ודבק ... והוא לבשר אחד* "he shall cleave ... and they shall be as one flesh", can be accomplished by males in homosexual union but not by females. This explanation seems to deal neatly with the various facets of the problem.³⁸

One other approach to the question of why Judaism has such antipathy to homosexuality deserves mention.³⁹ This approach

36. *Sanhedrin* 55a, Rambam, *Yad, Hilchot Issurei Biah* 1:10, and 1:14. *Shulchan Aruch, Even Ha'Ezer*, 20:2.

37. Gen. 2:24

38. This approach is suggested by the *Beraita, Sanhedrin* 58a, which derives prohibitions for various immoral sexual activities for Gentiles from this verse.

39. This approach was suggested to me by Mr. Mat Hoffman, national director of

expands on the **וְרַבָּק לְבָשָׂר אֶחָד ... וְהַיּוּ לְבָשָׂר אֶחָד** argument, reintroduces the centrality of the family in Judaism to the discussion of homosexuality, and treats the halachic differences between male and female homosexuality in a rather interesting way. This explanation argues that homosexuality, when it did occur at all in the Jewish community, usually occurred in a bisexual context and not as an exclusively homosexual orientation on the part of the individual. Individuals raised in the Jewish community usually possessed a strong sense of family as part of their tradition and heritage. This, coupled with the desire to find personal continuity into the next generation and with communal pressure to marry, would naturally lead almost everyone to establish a marriage relationship. Unfortunately, some individuals might seek additional companionship elsewhere. This outside companionship could possibly be homosexual in nature. Such an outside relationship might then be devastating to the special intimacy between husband and wife and to the family, the fundamental building block and most important religious institution in Jewish society.

Many rabbinic discussions allude to homosexuality in a strongly negative tone.⁴⁰ The Talmud⁴¹ discusses the meaning of the term "*toeivah*" as used in the context of homosexuality. Says Bar Kapparah, "*toeivah*" means "*"to'eh ata ba,"*" "you have strayed from her." This phrase is explained by *Tosafot*⁴² as meaning:

שָׁמְנִיחִין נְשָׁוְתִּיהָן וְהַוְּלִכִּין אֶצְל מַשְׁכֵב זָכָר.

"that they leave their wives to follow homosexuality."

This statement seems to embody the essence of the proposed explanation.

Whether because of different emotional needs on the part of

The Flame; Jewish College Student's Organization. It is also suggested, in brief terms, by Dr. Lamm, op.cit., pp. 197-198.

40. *Gen. Rab.*, 26;5 (commenting on Gen. 6;2)

וַיַּקְרְבוּ לְהָם נְשִׁים אַלְוֹ נְשִׁי אֲנָשִׁים מִכָּל אֲשֶׁר בָּחֲרוּ זֶה זָכָר בְּהַמָּה. רַב הָונָא בְּשָׁם רַבִּי אָמַר
דָּוָר הַמְּבּוֹל לֹא נִיְמַחוּ מִן הָעוֹלָם עַד שְׁכַתּוּ גִּמְוֹזִיסּוֹת לְזָכָר וְלְבָהָמָה.

41. *Nedarim* 51a.

women, their status in society, or because of the physiological impossibility of *וְהִי לְבָשָׂר אֶחָד* ... *וְרַבָּק* ... on the part of women, male homosexuality is considered a far more serious danger in this context and is, therefore, treated with greater severity.

Our discussion to this point leads to the following conclusions:

1. Homosexuality is an activity, not a state of being. Put another way, "homosexual" is an adjective, not a noun.
2. Homosexual activity is wrong.
3. Homosexuality may be a foreign incursion into Judaism.
4. The perpetrator of homosexual activity is held responsible for the activity.
5. We expect individuals involved in such activity to make every attempt to stop the activity and to alter their sexual orientation.
6. No greater halachic stigma attaches to the practitioner of homosexuality than to the Sabbath violator or the violator of many other divine commandments.

In light of these conclusions the traditional Jewish community should agree on the following goals:

1. The primary goal should be to create an environment that is most conducive to motivating the practitioner of homosexuality to want to change his orientation.
2. In the absence of this motivation or during a period when initial attempts to change are unsuccessful, our task is to keep this individual within the Torah community. We must create a situation which offers a positive alternative to the "gay synagogue" and to the even worse choice of complete abandonment and assimilation.

It would seem that these goals can best be realized by implementing the following agenda:

All unnecessary negative stigma must be removed from the individual involved in homosexual activity. Such an individual must be encouraged to see himself as someone with a problem that he is responsible to overcome, and not as a person who has been defined by his sexual orientation.

At the same time that the individual is told of his responsibility to change, he must also be told, with great compassion, that we recognize the difficulty of his task and that

we are willing to help in any way possible. This is similar, in general terms, to the way in which we treat others such as the alcoholic.

Specific programs of outreach to those participating in homosexual activities should be implemented so that those best able to respond to the questions of these individuals will have a chance to work with them. Contemporary Jewish organizations do *Kiruv* (outreach) work with individuals who violate many commandments. We must do the same with those whose failures are in sexual areas. This is particularly true because of the all-pervasive nature of sexual desire and because of the constant encounter with sexual imagery that pervades our society.

Mental health professionals must be encouraged to develop new and better therapeutic techniques to alter sexual orientation. Methods that are even partly successful must be highlighted and publicized to offer hope to those who would want to change.

The issue of homosexuality is an extremely sensitive, difficult, and emotional one. It is a topic that creates a sense of discomfort and even revulsion not only in those who may have been personally involved in such activity, but also in many who have never had any personal contact with it at all. Stereotyping and personal doubts about one's sexuality tend to maintain and reinforce these reactions and the AIDS scare has given them new impetus. Our response as Torah-true Jews must be to reject these prejudicial and counter-productive reactions. On the other hand, we cannot equivocate in our opposition to homosexual activity. This is particularly true in light of the media's continuing portrayal of homosexuals as positive role models and the increasing acceptance of the homosexual as a minority group with "legitimate" civil rights.

The program described above entails walking a difficult tightrope between condemnation of an act and acceptance of the perpetrator as a Jew worth saving. We cannot close our eyes and pretend that a problem of this magnitude will go away. It is our task to present a legitimate Jewish response, balancing our opposition to homosexual activity with our concern for the human beings involved.

On Studying Secular Subjects

Rabbi Moshe Weinberger

Introduction

R. Avrohom Yitzchok Bloch, the "Telzer Rov" was asked to evaluate the curriculum implemented in the yeshivas of Germany during the years before the Second World War. These yeshivas were guided by the famous "*Torah Im Derech Eretz*" method which included secular studies as a required part of the student's daily program. The opening paragraph of his responsum can serve well as an introduction to the present article:

In these matters it is extremely difficult to provide a clear halachic response, because the issues involved are, to a large extent, based upon *hashkafot* [ideological viewpoints] and opinions which are connected with Aggadic sections of the Gemara which operate under the unique guidelines of Aggada which has its own definitions of positive and negative commandments. It is therefore difficult to establish clear-cut principles and reach absolute halachic decisions as is done in the halachic section of the Oral Law. As a result of this, the law will vary depending upon the nature of the individual as well as the conditions that exist in a particular place at a particular time.¹

1. Published in *Hama'ayan*, Nissan 5736 and reprinted in *Shaarei Talmud Torah*, Dr. Leo Levi, Jerusalem 1981, p. 296.

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Because of the non-halachic nature of the issue it is often difficult to determine whether the sources are following accepted halachic principles or are simply reflecting the continuing debate over the philosophical and historical question of the place of secularism in the life of an observant Jew. My intention in this article is certainly not to enter into the explosive minefield of polemics but rather to attempt to extract the major halachic elements which can be discerned from the numerous sources which are related to the question.

Because of the problems stated, one must be careful, more than ever, to follow our Sages' advice "בַּרְאֵשׁ לְעַשֵּׂה," by consulting with a competent halachic authority whose wisdom is matched by his fear of Heaven.

The term *Chochmot Chitzoniyyot* () is not found anywhere in the Written or Oral Torah. In the literature of the *Rishonim* and *Acharonim* it is used to refer to areas of study which are not included in the perimeters of *Talmud Torah*.² *Chazal* themselves referred to these subjects as *Chochmat Umot Haolam* (worldly wisdom).^{2a}

The earliest source of any prohibition related to *Chochmot Chitzoniyyot* is found in the *Midrash Halacha*:

"Follow My laws and be careful to keep My decrees" (*Vayikra* 18:4). You must make the Torah of primary, not secondary, importance. All of your time should be occupied with it and you must not combine it with anything else in the world. Therefore one should not say "I have already studied the wisdom of Israel, now I will study the wisdom of the nations of the world." Thus it is written "And you shall walk in them," you may not exclude yourself from them, as it is written "Let them be only thy own, and not strangers with thee" (*Mishlei* 5:17). — Everything is

2. Rashba, Resp. I no. 415, 418; Rosh, Resp. no. 45; Meiri, Introduction to *Avot*. *Encyclopedia Talmudit*, Vol. 15, p. 45 ff. 1.

2A. *Torat Kohanim*, *Acharei-mot* 13:11:Sifri, *Devarim* 34.

included in it, and from it, you shall not swerve.³

The Mishna in *Avot* alludes to this: "Swerve not from the Torah, for there is nothing that excels it."⁴ In the *Zohar* it says, "לֹא תַּזְכִּיר שֵׁם אֶחָרִים" (*Shemot* 23:13). We learn that a man should not occupy himself with any books other than those of Torah. It is even forbidden to mention or refer to them.⁵ A disdainful attitude towards secular studies also emerges from the statement of the great tenth-century halachist, R. Hai Gaon:

Physical health as well as proper human conduct may be attained through occupation in the study of Mishna and Talmud. It is befitting for a Jew to study Torah since the wise man will himself be drawn to a greater level of deservance and understanding. Fear of G-d, humility, and holiness are traits that are to be found only among those who are occupied with the study of Mishna and Talmud and secular subjects as well, not among those who are exclusively dedicated to the study of secular subjects.⁶

Clearly, R. Hai does not forbid all forms of secular study, but

3. Ibid. In the *Sifri* this is derived from the words "and you shall discuss them" (ורבorth בם). We are commanded to discuss only the words of the Torah as opposed to words that are unrelated to the study of Torah. This *derash* is quoted in the *Baal HaTanya*'s formulation of the prohibition, *Shulchan Aruch HaRav, Hilchot Talmud Torah* 3:7. In his commentary to *Devarim* (30:12) Rabbeinu Bachya derives the prohibition from a verse in *Yeshayahu* (55:2) "Why do you spend money for that which is not bread, and you labor for that which satisfies not? Hearken diligently to me and eat that which is good, and let your soul delight in fatness." Rabbeinu Bachya explains: "You spend money in order to acquire *chochmot* — forms of wisdom that "are not bread", since the soul is not nourished by them. Why do you labor and waste your strength and the days of your lives involved in matters which do not satisfy the soul? 'Hearken to me and eat that which is good' — refers to the Torah which is called 'good' because it is the true bread which satisfies. From here we learn that one should not occupy himself with secular wisdom, but rather with that which is most important, the Torah."

4. 5:25. See Commentary of R. Moshe Alshich, *Yarim Moshe, Avot* 6:5

5. *Zohar* 2:123B. See also *Zohar* 1:100A.

6. Quoted by Ramban in "Terem E'neh", *Kitvei Ramban Mosad Harav Kook*, Vol. I p. 350, and Rivash, Resp. No.45.

rather expresses strong reservations about becoming exclusively involved in the pursuit of a secular education. This general attitude is advocated by the Ramo in his gloss to the *Shulchan Aruch*:

A man should study only Torah, Mishna, Gemara, and the *Poskim* who rely upon these subjects, and in doing so he will acquire this world and the next, and he should not study other *chochmot* [wisdom]. However, one is permitted to study the *chochmot* on an irregular basis (באקרראי) as long as he totally refrains from studying any heretical books.⁷

Thus, what began as a prohibition has seemingly evolved into a vague, undefined warning which distinguishes between different types of subjects and different levels of involvement.

The ambiguity of this "halacha" becomes more pronounced in light of the fact that there are numerous sources in the Talmud as well as in the works of the *Rishonim* and *Acharonim* which strongly encourage the study of certain secular subjects. Our Sages were not only "guilty" of lavishing praise upon secular scholars, they went so far as to establish a specific blessing to be recited upon seeing a non-Jewish scholar, who is referred to as a *chacham*.⁸ R. Yaakov Proventzali boldly claimed: "Each one of the

7. *Yoreh Deah* 246:4. This *psak* will be discussed in greater detail. The Ramo himself mentioned that he pursued his secular studies on Shabbat and Yom Tov while most of the people were enjoying their afternoon strolls. (Resp. no. 7)

8. *Berachot* 58a, *Megilla* 16a. The Maharal of Prague writes: "Our Sages have explained to us in *Berachot* that when one sees a wise man of the gentiles he recites the blessing 'Blessed ... Who has given (יָנָה) from His wisdom to flesh and blood'. However when one sees a wise man of Israel, why must he say 'Blessed ... who has given (תָּלַח) from His wisdom to those who fear Him.' What is the difference between the two? Regarding the gentiles the word תָּלַח is used which infers that it is not from the essence of wisdom, which is divine. Therefore we say "to flesh and blood" because the wisdom they have received from G-d relates to their essence which is physical, and it is not from the true wisdom of G-d Himself. However to Israel G-d has granted the ultimate wisdom, which is divine ... Therefore it appears to me that one should learn the wisdom of the nations, for why should someone not study a form of wisdom that comes from G-d?" *Netivot Olam*, *Netiv HaTorah* Ch. 14. See also *Netiv*

seven scientific wisdoms is praiseworthy and beloved in the eyes of our sages. There is not one instance in the Babylonian Talmud or Jerusalem Talmud or in any Aggada where *Chazal* criticised any wisdom.”⁹

The same Rabbenu Bachya who in his biblical commentary emphatically asserts the supremacy of Torah study over all secular studies, elsewhere writes: “It is well known that each of the seven wisdoms is a ladder on which one can rise to divine wisdom.”¹⁰ R. Yisroel of Shklov, a prominent student of the Gaon of Vilna, quotes his illustrious teacher: “He (the Gaon) said that all the sciences are necessary for our holy Torah and are included in it. In order to understand and attain the wisdom of Torah which is the sublime wisdom, one must also study the seven wisdoms of the lower world of nature.”¹¹ He added that the Gaon “knew them all completely ... algebra, trigonometry, geometry, music, etc.” On the

Yirat HaShem Ch. 5, and *Maharsha*, *Chiddushei Aggadot*, *Berachot* 58a and *Hagahot Ha'Rashash*.

9. Quoted by Levi, *Shaarei Talmud Torah* p. 248, in the name of *Divrei Chachamim*.
10. Commentary *Avot*, end of Ch. 3.
11. Introduction *Peat Hashulchan*, R. Hillel of Shklov, *Kol Hatur* Part 2, Ch. 5. R. Boruch of Shklov quotes the Gra as saying: “To the extent to which a person lacks knowledge in the other sciences he will lack accordingly a hundredfold in the science of Torah.” (Intro to R. Boruch’s Translation of Euclid). In his biography of the Gaon, R. Bezalel Landau quotes R. Eliyahu of Kalish: “In our times we have seen our holy Rebbe the golden *Tanna* of Vilna, in comparison to whom all the greatest of scholars and professors of the world, are as the ‘peel of a garlic.’ They were totally at a loss before him in all matters relating to the ‘Seven Wisdoms’ and they confessed that the Gaon’s mind was not of flesh and blood but rather that of an awesome man of G-d.” (*Yad Eliyahu Pesakim* No. 25). For a few major sources which express a similar attitude towards the ‘wisdom of the nations’ see: *Iggeret HaRambam* to R. Yehonatan of Corbeille in Resp. Rambam, Blau III p. 57; Rambam *Mishneh Torah*, *Yesodei HaTorah* 4:12; R. Avraham Ibn Ezra Introduction to *Chibbur HaMesicha Vehatishboret*, Ramo, Resp. No. 5,7; *Chovot Halevavot* Intro 2:2; R. Yaakov Emden, *Sheilat Yaavetz* 41 and *Mor U'Ketziya Orach Chaim* 307; R. Yom Tov Lipman Heller, *Malbushei Yom Tov Orach Chaim* 294; Ramchal, end of *Derech Chochma*; N’tziv, *Harchev Davar Devarim* 32:2; *Chatam Sofer Derashot* p. 112; R. Yisrael Lifshitz *Tiferet Yisroel Derush Or Hachayim Sanhedrin* Ch. 3.

other hand the Gaon's biting criticism of the Rambam is unforgettable: "He was drawn after the accursed philosophy."¹²

Obviously the term *Chochmot Chitzoniyot* is a very general one which includes all forms of study which do not involve direct reference to biblical or rabbinic texts. Taking into account the apparent inconsistencies between rabbinic admiration and condemnation of secular studies, we must conclude that they were referring to different areas of study, some strictly forbidden and others which are strongly advocated.

The key to distinguishing between different types of secular studies may be derived from the *Netiv HaTorah* of the Maharal of Prague, where secular subjects are divided into categories:

1. Subjects which deal with the description and study of man's physical environment.
2. Subjects which are considered *Divrei Chochma* (matters of wisdom) and consequently may be helpful tools in the study of Torah.
3. *Chochma yevanit* — "Greek wisdom", which has no relationship to the study of Torah.
4. *Minut*—Subjects which involve the study of heretical or immoral doctrines which oppose the teachings of the Torah.

According to Maharal, all subjects which fall under the first category must be studied. This study is considered a fulfillment of the mitzvah of acknowledging and loving the Creator. The second category contains subjects with which the Torah student should be familiar because "this wisdom is like a ladder upon which one ascends to the knowledge of Torah." In halachic terminology these subjects are a *Hechsher Mitzvah* (an aid to performance) of Talmud Torah. The subjects which are included in the third category may in most cases not be studied at all because there is no justification to lose time from Torah study in order to undertake the study of subjects which cannot even be considered a *Hechsher Mitzvah* of the commandment to learn Torah. (We will see that

12. *Biur Hagra Yoreh Deah* 179:13. See also R. Bezalel Landau, *HaGaon Hechassid MiVilna*; Ch. 17 Note 10.

there are some exceptions to this prohibition.) Subjects which fall under the fourth category are strictly forbidden unless the student's sincere intention is to refute the false doctrines of the heretics.¹³

A number of issues need to be discussed:

1. Practically speaking, to which specific subjects is the Maharal referring?
2. How do we define the relationship between permissible (or obligatory) secular studies and the obligation to immerse oneself in the study of Torah?
3. May secular subjects be studied in secular institutions or within the context of a dual curriculum of Torah and other studies?
4. Is the halachic status of secular studies affected by the individual's need to earn a livelihood as a result of his secular training?

The Obligation

We are obliged from rational considerations, from the Scriptures, and from the tradition ... to investigate the creatures of this world and derive from them proof of the wisdom of the Creator ... and if he [man] refrains from studying them he will not be similar to the beasts but inferior to them.¹⁴

One of the positive commandments of the Torah is to love and fear G-d. In his *Sefer HaMitzvot* the Rambam tells us how we may fulfill this mitzvah: "We must think and meditate upon His commandments, teachings, and actions until we fully comprehend them and thereby sense the greatest and most sublime pleasure

13. See also Maharal *Derech Chayim* 3:18, *Tiferet Yisroel* Ch. 13, *Netzach Yisrael* Ch. 30. A discussion of the Maharal's attitude towards *Chochmot Chitzoniyyot* may be found in *Hamachshava Hapedagogit Shel HaMaharal Miprag*, Aharon Paritz Kleinberger, Magnes Press, Jerusalem 1962, pp. 77-82, 92-100, 145-155.

14. See *Chovot Halevavot*, Entire *Shaar Habechina*; *Sefer Hachinuch* No. 418; Ramban, *Ha'emunah*

possible.¹⁵ In *Mishneh Torah* he is more explicit:

And what is the path to love and fear of G-d? When a man contemplates the remarkable creations of G-d and in doing so sees His wisdom which is infinite, he immediately loves and praises G-d and feels a great desire to know His great Name.... As our Sages said regarding the love of G-d, that from this you will come to recognize Him Who created the world.¹⁶

At first glance it may seem that the Rambam is merely

15. Rambam, *Sefer Hamitzvot* Positive Commandments 3-4

16. *Hilchot Yesodei HaTorah* 2:2-3; Resp. Rambam *P'eer Hador* No. 53. See also the commentary of *Kinat Sofrim* to *Sefer HaMitzvot*, pos. comm. 3 and R. Wolf Boskowitz in *Seder HaMishna Yesodei HaTorah* 2:2 who discuss the fact that in his *Mishneh Torah* the Rambam only mentions contemplation and study of the world as a means of attaining love of G-d while he seems to ignore the other two methods cited in his *Sefer HaMitzvot*.

The Rambam's major sources for this halacha may be found in the *Sifri*, *Devarim* 6:6, 11:22. Additional sources which possibly influenced his formulation of this halacha are: *Berachot* 10a, *Chullin* 60a, *Pirke' D'Rav Elazar* Ch. 3, *Tanna D'bei Eliyahu Rabba* Ch. 18, 21, 27 (cited in *Mareh Mekomot L'Mishneh Torah*, Lubavitch 5744).

See also similar comments of the Rambam in *Yesodei HaTorah* end Ch. 4, *Hilchot Teshuva* 10:6, *Hilchot Mezuza* 6:13. In these halachot the Rambam emphasizes the mitzvah of 'Yediat HaShem' – knowledge of G-d, as an end in itself. See also *Guide for the Perplexed* 1:34, 3:23, 25. In 3:54 he writes: "It is clear that the perfection of man that may truly be gloried in is the one acquired by him who has achieved, in a measure corresponding to his capacity, apprehension of Him, may He be exalted, and who knows His providence extending over the creatures, etc."

In the commentary of the *Netziv* to *Shir HaShirim* (3:1) we find the following:

"It is certain that someone who has not toiled in the study of Torah cannot possibly be drawn to love of G-d by means of investigating and studying the **חכמת הבריאה** (nature). This can be compared to someone who has heard about a certain man of great qualities who is worthy of loving but he has never met this man nor would he recognize him if he saw him. So it is with knowledge of nature. Such knowledge cannot awaken in the heart of the "scientist" an intense love of G-d since he is far from the study of holy matters. Only when he has attached his heart and soul to the laws of G-d which draw the individual to holiness, can he then come to recognize Him Who has created the world and be filled with love of Him".

instructing us to study and admire nature which would presumably inspire us to love and fear the Creator. This naturalistic interpretation is clearly dispelled by his remark in the *Guide*:

You know that these matters are mutually connected; there being nothing that exists besides G-d, may He be exalted, and the totality of the things He has made. For this totality includes everything comprised in what exists besides Him. There is, moreover, no way to apprehend Him except through the things he has made, for they are indicative of His existence and what ought to be believed about Him, I mean to say of what should be affirmed and denied with regard to Him. It is therefore indispensable to consider all beings as they really are so that we may obtain for all of the kinds of beings true and certain premises that would be useful to us in our researches pertaining to the divine science. How many are the premises thus taken from the nature of numbers and the properties of geometrical figures from which we draw inferences concerning things that we should deny with respect to G-d As for the matters pertaining to the astronomy of the spheres and to natural science [physics, biology, etc.], I do not consider that you should have any difficulty in grasping that those are matters that are necessary for the apprehension of the relation of the world to G-d's governance as this relation is in truth and not according to the imagination.¹⁷

Clearly, this is quite an inclusive curriculum, a challenge for even the most committed "secularist".¹⁸

17. 1:34. See R. Yoseph Kapach, "Limudei chol B'mishnat HaRambam" in *Techumin* published by *Tzomet Elon Shevut*, Vol. II Summer 5741 p. 242-251.

We mustn't be misled to think that this approach represents only the attitude of the "enlightened" Jewish philosophers of the Middle Ages. R. Yaakov Emden expressed similar sentiments: "However, knowledge of nature is different and it is definitely permitted, praiseworthy, and an essential means of contemplating the awesome works of G-d." *Sheilot Yaavetz* No. 41.

18. A profound example of how the physical sciences enable the individual to fulfill the commandment of "Love of G-d" may be found in the first chapter of

This "obligation" to engage in secular studies for the purpose of knowledge and love of G-d has far-reaching halachic implications. In the Gemara we are told: "It is a mitzvah to calculate seasons and constellations ... He who knows how to calculate seasons and constellations and does not calculate them, concerning him the verse says: 'They would not regard the acts of G-d, and the work of His hands they did not see.'"¹⁹

There are quite a number of explanations of what is meant by calculating seasons and constellations.²⁰ Most *Rishonim* agree that it refers to the study of mathematics, but they differ as to which particular area of mathematics is included. There is also a dispute concerning the question of whether or not this obligation is to be considered an actual mitzvah.²¹ At any rate the underlying purpose of this mitzvah is to "see the work of G-d's hands" by mandating the individual to undertake scientific investigations that will bring this to his attention.

However, even regarding the study of natural science there are a number of restrictions. In a responsa written before the Second World War by R. Avrohom Yitzchok Bloch, we find the following:

Regarding scientific subjects which contain within them elements of heresy, such as biology and other fields, the subjects themselves are subjects of wisdom (*Divrei Chochma*) and serve a purpose; they can also be used in the study of Torah and for strengthening one's faith in G-d. However, the non-religious scientists have mixed into these subjects their false

Emunah U'Bitachon by the *Chazon Ish*. See also *Mussar Hakodesh* of R. Avraham Isaac HaKohen Kook p. 171-173 and *Orot Hakodesh* 1:183, 2:493; R. Eliyahu Dessler, *Michtav M'Eliyahu* 3:199-200; R. Yisroel Yaakov Kanievsky, *Chaye Olam* 1:1, 2:2. A fascinating example of the Chassidic approach to this may be found in *Hachsharat ha-Aurechim* by R. Kloniyomos Shapira, the Rebbe of Piatzseno pp. 54-58.

19. *Shabbat* 75A.

20. See *Encyclopedia Talmudit*, Vol. 15 pp. 78-79 and footnotes.

21. See *Halachot Gedolot*, pos. comm. no. 75; *Sefer HaMitzvot Hagadol*. Pos. Comm. No. 47, *Sefer Mitzvot Katan* No. 103. Most importantly see the Ramban and Rambam in *Sefer HaMitzvot* end of *Shoresh 1* and the commentaries of *Lev Someach* and *Megillat Esther*, ad. loc.

ideas which are constructed upon theories that have never been really tested and are often heretical. It is not forbidden to study the sciences but it is essential that one "distinguish the chaff from the grain" by making certain that only that which is truly scientific is studied. We are in great need of G-d-fearing Torah-oriented individuals who are capable of writing scientific textbooks to be used by those Jews who are incapable of distinguishing between true wisdom and the fabricated theories of many modern authors.²²

22. Quoted in *Hama'ayan*, Nissan 5736. Interestingly, in his discussion of the mitzvah of "Tekufot U'Mazalot", R. Aryeh Leib of Gur writes: "When the Gemara stated the obligation to calculate the constellations, etc., it was only referring to a situation where the individual was not involved in the study of Torah, since *Talmud Torah* clearly takes precedence over other subjects. Perhaps we may say that since "calculating" is a mitzvah one must interrupt his learning in order to fulfill it, as it is with other mitzvot." (*Sefat Emet, Shabbat 75A*)

R. Yoseph Chaim of Baghdad was asked if subjects such as math and writing may be taught in a Synagogue or Beit Midrash where Torah classes are regularly conducted. His conclusion was, "We have thus learned that preparing children for a trade (אומנות) is not considered a *Dvar Mitzvah* and even math and geometry which are needed for the study of Torah are not included in the category of *Dvar Mitzvah*. It is therefore obvious that the study of Arabic writing and logic are not a *Dvar Mitzvah*. Consequently, it is certain that in relation to the holiness of a Synagogue or Beit Midrash which are the honor of G-d, the study of these subjects does not constitute a *Dvar Mitzvah*. In fact it is nothing more than שָׁנָא תַּלְכֵד (frivolity) in a holy place, and it is forbidden. Therefore special rooms should be designated for the purpose of studying these subjects. (Resp. *Rav Pealim Orach Chaim* II no. 22.)

R. Eliezer Waldenberg in *Tzitz Eliezer* (vol. 9, 15-16) does not really discuss the halachic status of these subjects but he does question the permissibility of teaching secular subjects even in a *classroom* that is regularly used for Torah study. He cites sources in the Gemara and *Rishonim* that seem to indicate that the *Kedusha* of a classroom where children study Torah exceeds that of a Synagogue or Beit Midrash. Subjects which might be considered a *Dvar Mitzvah* he permits under certain conditions, but subjects which clearly do not fall under that category may not be studied in classrooms which are used for *Talmud Torah*.

Yet, R. Moshe Feinstein, in *Iggerot Moshe Yoreh Deah* III, no. 83, warns that we should "G-d forbid" not send our children to public schools for their secular education. He finds nothing wrong with their studying secular subjects in their yeshivot.

Even assuming the availability of proper textbooks, R. Bloch cautions that it is improper to study the sciences before the student has spent a considerable amount of time studying Torah.

Moreover, he submits that even science should be studied only under the guidance of a teacher who is an observant Jew, careful to teach only that which is beneficial and to avoid false theories. Nor should one assume that "calculating the seasons and constellations" was intended to become an obligatory subject in a yeshiva curriculum.

Besides the natural sciences there is another secular subject which some authorities include in the obligation to study those things which lead to love and fear of G-d — history. In the *Shulchan Aruch* we find the following halacha: "Belles-letters, secular parables, romances such as the book of Emanuel, and books of wars, are forbidden to read on Shabbat, and even during the week it is forbidden as a 'session of scoffers' (*מושב לרים*); concerning romances there is an additional prohibition against inciting the evil inclination."²³ The *Beer Hetev* points out: "Yosippon, *Sefer Hayuchsin* and *Divrei HaYamim* of Ri Kohen are

23. *Orach Chaim* 307:16. These *issurim* will be discussed in greater detail.

R. Yaakov Emden displays quite a moderate attitude in regard to the study of history:

"One should only study these subjects (Books of Wars, etc.) during the week. Most of the material is found in the history books of the gentile kings who have died and is totally unnecessary. It is therefore forbidden to read such books on a regular basis, but rather one may look at them when he is taking a trip, when his "heart is weak" from deep concentration in the study of Gemara, or in order to learn from them clear and precise language ... It is also important that a Torah scholar should not be ignorant in the knowledge of history so that he should not be considered a fool in the matters of this world. In addition to this, the study of history may often provide guidance in those matters which are beneficial to us in the present in terms of our relations with non-Jewish kings and noblemen." (*Mor U'Ketziya* 307:18).

It is important to note that R. Yaakov Emden was clearly concerned with the possibility of a *Chilul HaShem* in the case of a *Talmid Chacham* not acquainted with worldly matters as presented in secular books. R. Moshe Chayim Luzatto writes: "A person who must mingle with learned gentiles should study that which will cause them to respect him. As a result G-d's name will be honored through him." (*Derech Chochma*, End). R. Hillel of Shklov, a

not included in this prohibition because from them one can learn ethics and fear of G-d, and so it is with the book *Shevet Yehuda*." In other words, the study of Jewish history (as long as appropriate sources are used) is not included in the *issur* of learning secular matters on Shabbat. On the contrary, it is not considered secular at all and thus no *heter* is required.²⁴

A number of authorities have expressed positive sentiments regarding the study of general history. R. Samson Raphael Hirsch wrote:

But to obtain knowledge of nature and history ... is not only something permitted but something which is eminently desirable to the fullest possible extent, for only a mind armed with such a wide panoramic view on all matters can draw the right conclusions of the

foremost disciple of the Gaon of Vilna writes:

"It is well known that he [the Gaon] also occupied himself much with research into nature ... in order to attain knowledge of Torah and in order to sanctify G-d's name in the eyes of the nations ... He often told us personally: 'What are our Torah scholars doing for the sanctification of G-d, like the great men of past years in Israel, many of whom sanctified the name of heaven by their broad knowledge and research into the secrets of nature, the wonders of the Creator.' (Kol Hatora 5:2, quoted in *Torah and Science*, Leo Levi p. 34) See also the commentary of the *Chatam Sofer* on the verse in *Shoftim* s.v. *Mi Haish* and his commentary on *Sukkah* 36a s.v. *Domeh Lekushi*. It appears that once an individual has the reputation of being of Torah scholar and leader, he should familiarize himself with certain areas of secular knowledge. This will be discussed in greater detail in this paper.

Concerning the study of history and current events see also R. Yechiel Michel Epstein, *Aruch HaShulchan* 507:9.

24. In the introduction to his *Binu Shenot Dor Vador* (Jerusalem 5745) Rabbi Nosson Dovid Rabinowitz cites a fascinating letter from R. Chaim Ozer Grodzinski who explains why Jews of previous generations rarely studied Jewish history as a subject within itself, whereas in modern times we must be involved in such study and books must be written by *Talmidei Chachamim*. (p. 28-30). See also the introduction of R. Shlomo Rottenberg to his *Toldot Am Olam* and R. Halprin, *Atlas Etz Chain Tannaim V'Amoraim* Ch. 3. A profound discussion of this obligation may be found in the collected letters of R. Yitzchok Hutner (Jerusalem 5741), p. 162.

Jewish position in the world in the whole of its uniqueness.²⁵

Similarly the *Chazon Ish* wrote:

Knowledge of the history of the world enlightens the path of the wise man and upon the history of the past he may establish the foundation of his wisdom The wise man must search through the books and extract the truth from them and discard the lies.²⁶

In a letter to a student seeking his guidance, R. Yitzchok Hutner responded:

If we study all the experiences and difficulties of the Jewish people from the perspective of the Torah we can understand that all that has transpired is a result of G-d's ways and His behavior with His chosen nation. Whatever we add to our own knowledge and understanding of world history in general and Jewish history in particular (from a Torah perspective), adds to our understanding the ways of G-d. Therefore there is no greater means of growing closer to our Father in Heaven than deepening our knowledge in this subject. Whoever limits his service in the love and fear of G-d to discussions of *Gan Eden* and *Gehinnom* has no portion in our *Beit Midrash*!²⁷

25. Commentary, *Devarim* 4:52. R. Hirsch's famous system of "Torah im Derech Eretz" revolved around the question of secular studies as part of the curriculum of the Jewish student. Bnei Brak 5741.

26. *Emuna Ubitachon* 1:8.

27. Concerning the study of foreign languages and particularly the importance of being familiar with the language of the country in which you live, see *Sotah* 36b, *Sanhedrin* 17a; Ramchal, End of *Derech Chochma*, R. Yechezkel Landau *Derushei Hatzlach* No. 39. R. Akiva Eiger mentions in a letter that he saw to it that his children practice writing and reading for two hours each day. There was a major debate among the Lithuanian *Rashei Yeshiva* in the previous generation concerning the question about whether or not this study should be allowed in the curriculum of the yeshivot. See R. Menachem Mendel Yashar's biography of the *Chafetz Chaim* Ch. 42, and *Shaarei Talmud Torah* p. 284-285.

Secular Studies as a 'Hechsher Mitzvah'

We have already noted the famous statement of the Gaon of Vilna: "According to how much a man lacks knowledge of other wisdoms, correspondingly he will lack a hundred-fold of Torah wisdom." This and countless similar sentiments expressed by scores of *Rishonim* and *Acharonim* refer to the practical application of secular knowledge in two basic areas, *Talmud Torah* (learning Torah) and *Kiyum HaMitzvot* (observance of the commandments).

It is clear from the Talmud that many Sages were quite proficient in various areas of the sciences and that they utilized this knowledge in order to clarify relevant halachic questions.²⁸ Also, they did not hesitate to use scientific conclusions obtained from non-Jewish sources in order to reach halachic decisions.²⁹ The study of medicine is specifically permitted in the Torah itself and according to many authorities is a great mitzvah.³⁰

A comprehensive discussion of secular subjects which may lead the individual to a higher level of understanding and

28. For examples, see *Pesachim* 88b, *Horiyot* 10a, *Shabbat* 108a *Bava Metzia* 85a, *Niddah* 25b, *Bava Kama* 82a, *Sanhedrin* 21, 33, *Chullin* 56a-57, 63b, 95a, 127a, *Bechorot* 45a. R. Moshe Weiss in *Beit Yechezkiel*, p. 126-128, cites numerous sources.

29. See the entire discussion in *Pesachim* 94b regarding the statement of R. Yehuda HaNassi. See also *Shabbat* 85a and Yerushalmi *Sheviit* 9:2; R. Yehonatan Eybeschutz *Kereti U'Peleti* 40:4; *Biur HaGra* Y.D. 201:6. R. Yaakov Ettlinger, author of the *Aruch Laner* writes: "We keep far away from innovations in the matter of Torah and mitzvot. However, regarding the innovations of the artisans, the scientists in matters of nature, why should we not accept the good from them to strengthen the weak areas in our knowledge in order to observe more effectively the mitzvot of G-d?" (Letter concerning machine-baked Matzot in *Bitul Modaah* p. 14-15.) See also Resp. *Zekan Aharon* (Sephardic) No. 25.

30. See *Berachot* 60a and *Shiurei Mussar Haskel* of R. Hai Gaon 162; letter of Rambam to Sages of France quoted in *Kovetz Teshuvot HaRambam* part 3; and Assaf, *Mekorot L'Toldot Hachinuch* Vol. II p. 31; R. Yaakov Emden *Sheilat Yaavetz* No. 41. The nature of this mitzvah as well as the halachic responsibility of the doctor to constantly study his field is discussed by R. Eliezer Waldenberg in *Resp. Tzitz Eliezer* Vol. 5, No. 20-22. In recent years many journals and books have been dedicated to this subject.

observance is found in the *Yaarot Devash* of R. Yohonatan Eybeschutz:

For all the sciences are "condiments" and are necessary for our Torah, such as the science of mathematics, which is the science of measurements and includes the science of numbers, geometry, and algebra and is very essential for the measurements required in connection with the *Eglah Arufah* and the cities of the Levites and the cities of refuge as well as the Sabbath boundaries of our cities. The science of weights [(i.e., mechanics)] is necessary for the judiciary, to scrutinize in detail whether scales are used honestly or fraudulently. The science of vision [optics] is necessary for the Sanhedrin to clarify the deceits perpetrated by idolatrous priests; furthermore the need for this science is great in connection with examining witnesses, who claim they stood at a distance and saw the scene, to determine whether the arc of vision extends so far straight or bent. The science of astronomy is a science of the Jews, the secret of leap years to know the paths of the constellations and to sanctify the new moon. The science of nature which includes the science of medicine in general is very important for distinguishing the blood of the *Niddah* whether it is pure or impure ... and how much more it is necessary when one strikes his fellow man in order to ascertain whether the blow was mortal, and if he died whether he died because of it, and for what disease one may desecrate the Sabbath. Regarding botany, how great is the power of the Sages in connection with *kilayim* [mixed crops]! Here too we may mention zoology, to know which animals may be hybridized; and chemistry, which is important in connection with the metals used in the Tabernacle, etc.³¹

31. *Yaarot Devash* 2:7 as translated by L. Levi, *Torah and Science* p. 24-25. Similar lists may be found in R. Avraham Ibn Ezra's introduction to *Chibbur Hameshicha Vehatishboret* and R. Bachya's commentary on *Avot*, End of Ch. 3.

We may conclude that the sciences have always been studied for the purpose of furthering understanding of Torah and observance of the mitzvot. But not all secular wisdom has been equally lauded by the Sages.

Greek Wisdom

Although the term "Greek wisdom" is often used in rabbinic literature as a derogatory reference to many types of secular studies, it correctly applies only to a very specific prohibition found in the Gemara.³²

What is intended by the stricture against "Greek wisdom?" According to Rashi, Rambam, and others, it is a form of communication by means of riddles, hints, and artful language (דָבָרִי חִידּוֹת וּרְמִזּוֹת).³³ The Rivash insists that the prohibition is to "speak Greek in riddles and in an obscene manner which the general public does not understand."³⁴ The Maharal similarly concludes that "Greek wisdom refers to figurative and artful speech."³⁵ According to these authorities, Greek wisdom is a very specific form of ancient communication; it certainly does not include other areas of secular studies. Rambam clearly states: "There is no doubt that this form of wisdom has been lost and not even a trace remains."³⁶

32. *Sotah* 49b, *Menachot* 64b, *Bava Kama* 82b, *Yerushalmi Berachot* 4:1, *Taanit* 4:5. Our Rabbis taught that when the kings of the Hasmonean house fought one another, Hyrcanus and his men were outside the Temple compound and Aristobolus within. Each day those inside used to lower some coins in a basket, and haul up for them animals for the daily sacrifice. An old man on the outside who was learned in Greek Wisdom spoke with them in Greek saying, "As long as they carry on the Temple service they will never surrender to you." The next day, when they let down coins in the basket, the others placed therein a pig. When the pig reached halfway up the wall, it stuck its hoofs into the wall and "the Land of Israel was shaken over a distance of four hundred parsangs." At that time they declared "Cursed be a man who rears pigs, and cursed be the man who teaches his son Greek Wisdom."

33. Rashi, *Menachot* 64b, Rambam, Commentary on Mishna end of *Sota*.

34. Resp. Rivash No. 45.

35. *Netiv HaTorah* Ch. 14.

36. Meiri *B.K.* 83B. See also *Minchat Kenaot* of Aba Mari, letter No. 93. As for

However, other *Rishonim* considered the talmudic decree to be more inclusive. According to Meiri, Greek wisdom is in fact Greek philosophy which was prohibited because of its heretical content. However, it is clear that most *Rishonim* do not consider "Greek wisdom" as a form of secular studies at all.³⁷

The relevance of "Greek wisdom" to the question of secular studies results from its being mentioned in the context of two talmudic discussions which are fundamental to our understanding of the prohibition of *Bitul Torah* (wasting time which could be spent in Torah study). This will be discussed in greater detail later.

"Books of Heresy"

In talmudic and post-talmudic sources the terms generally refer to literary material which to varying degrees contains heretical or immoral doctrines. Much research has been undertaken to identify accurately and to classify the specific texts which fall under each category. But the prohibition involved in studying such subjects is unrelated to the general question of secular studies, the distinction being that the study of this literature involves other *issurim*, namely, idolatry or "incitement of the evil inclination." It is not the "secular" quality of these books but rather the inherent subject matter which causes them to be prohibited. There is considerable debate among the *Rishonim* and *Acharonim* regarding one's obligation to refute heretical claims against the Torah and how that responsibility is to be understood in light of the *issur* to study heretical literature.³⁸

how this approach can be understood in terms of the decree of the Gemara, the *Avodat Hakodesh* concludes that the Sages were really concerned with forbidding the study of Greek philosophy but needed an immediate reason to enact a *gezarah*. See *Encyclopedia Talmudit* Vol. 15 pp. 60-61. Interestingly, R. Meir HaLevi Abulafia is quoted as defining Greek Wisdom as astrology (*Shitah Mekubetzet* B.K. 82). See also *Yefe Mareh* on *Yerushalmi Peah* 1:1. See R. Yitzchok Issac Herzog "The Ban Pronounced Against Greek Wisdom" in *Judaism, Law and Ethics*, Soncino Press, 1978.

37. R. Dovid Friedman from Karlin, *Emek Beracha* Sec. 3

38. See *Encyclopedia Talmudit* Vol. 15 pp. 64-66; *Binu Shenot Dor Vador* 261-292;

One aspect of the above-mentioned prohibition does apply to the general question of secular studies. In the Gemara we are told: "Whoever learns even one thing from a 'magus' is worthy of receiving the death penalty."³⁹ Rashi explains *magus* as "a heretic who attempts to draw his students to idolatry." According to this interpretation it is forbidden to receive instruction in any subject from such an individual. This view in itself would not pose a formidable problem, but there are authorities whose interpretation of this halacha is considerably broader. The Maharal of Prague writes: "We have learned that one should study the subjects which enable him to comprehend the nature of the world but the matter needs further consideration, since it is forbidden to learn from an impious teacher and he has a personal attachment to him...."⁴⁰ This designation of an "impious teacher" might include many university instructors. However, in terms of the actual halacha, Rambam and *Shulchan Aruch* understand the problem of the "impious teacher" as relating exclusively to the area of *Talmud Torah*.⁴²

Shaarei Talmud Torah 275-282; R. Yeshaya Tuvia HaLevi Director, *Sefer Likutey Tal*, Jerusalem 5736, is devoted entirely to this subject and cites hundreds of sources which deal with the prohibition of ספרי חכמת חיצוניות מינין and בכמויות. See also *Resp. Lev. Avrohom*, 143.

There is a fascinating question that has been raised by a number of authorities: May a Jewish book dealer sell books which are halachically forbidden to his Jewish customers? The solution to this problem revolves around the nature of the prohibition of לֹפֶנְךָ עֹרֶךְ תְּחִנָּן מַכְשָׁלָן ('Do not place a stumbling block before a blind man') and מסיע בידיו עוברי עבירה (assisting a person who is violating a prohibition). See *Ramo* Y.D. 151:1; *Pitchei Teshuva* 151:2; *Resp. Beit Yitzchok* O.C. No. 29; *Chavot Yair* 185; *Resp. Meshiv Davar* 31-32; *Ktav Sofer* Y.D. 83; *Arugot Habosem* O.C. 54; *Chazon Ish Avodah Zara* 1:13; *Birkei Yoseph* C.H. 9:3 *Ginat Veradim* 43; *Aruch Hashulchan* C.H. 34:12; *Sdei Chemed Maarechet Vav* 26:7; *Resp. Zofnat Paaneach* 276:4; *Resp. Machane Chaim* O.C. II:1; *Mishnah Berurah* 307:61, *Resp. Lev Avrohom* 73. Almost all of the poskim agree that it is forbidden to sell prohibited books and the main argument is whether a biblical or a rabbinic prohibition is involved.

39. *Shabbat* 75a. See *Shulchan Aruch* Y.D. 179:19 and *Shach* and *Gra*. See also *Avodah Zara* 17b.

40. *Netiv HaTorah* Ch. 14. See also *Likutei Etzot Maharan M'Breslav* 8.

42. *Rambam Talmud Torah* 4:1, Y.O. 246:9.

The *Shulchan Aruch* prohibits the reading of "secular parables and romances." Romances may involve the additional *issur* of inciting the evil inclination,⁴³ but there is no clear halachic classification for this type of material. Obviously a book, magazine, or poem which depicts sexuality in a way which is offensive to Torah values is forbidden. Although some Jewish scholars have written that an observant Jew has much to gain from classical fiction and poetry in terms of the development of his spiritual personality, ("Who can fail to be inspired by the ethical idealism of Plato, the passionate fervor of Augustine, or the visionary grandeur of Milton? ... There is wisdom among the Gentiles, and we ignore it to our own loss."⁴⁴) such statements do not seem to take into account the halachic problems involved in attaining inspiration. Many outstanding books, even classics, present concepts or describe the human situation in ways that might be considered heretical, in spite of the possible inspirational effect they might have on the reader. Rabbi Aharon Lichtenstein quotes the famous statement attributed to the Rambam, "Accept the truth from whoever states it," but does not quote the Rambam's explicit ruling: "It is forbidden to cause oneself to be sexually aroused or to think an improper thought."⁴⁵

43. *Shulchan Aruch, Orach Chaim* 307:16. See *Ketzot HaShulchan* 107:26 and *Badei HaShulchan* 43.

44. R. Aharon Lichtenstein: "A Consideration of General Studies From a Torah Point of View" reprinted in the *Torah U'Mada Reader*, Max Stern Division of Communal Services, Rabbi Isaac Elchanan Theological Seminary, Yeshiva University.

45. *Hilchot Issurei Biah* 21:19. See also commentary on *Mishna Sanhedrin* 54. Concerning magazines and newspapers see: *Mishnah Berurah* 307:61 and the *Biur Halacha, Resp. Beer Moshe* (Debrecin) Vol. 6, No. 66; *Ketzot HaShulchan* 107:26; *Aruch HaShulchan* 307:9-10; *Derech Pekudecha* (R. Tzvi Elimelech of Dinov) part 3 p. 24; R. Gedalia Felder, *Yesodei Yeshurun* p. 361.

The halacha regarding books of romances, etc., is found in the section of *Shulchan Aruch* which deals with the halachot of *Muktza* on Shabbat. The books, which fall under the category of קשח חלין or דברי תורה, may not be read on Shabbat and hence they are deemed "utensils of prohibited usage," and consequently may be moved only לזרך גופם או מקומם i.e. to stand on or remove from the table in order to eat. R. Israel Pinchos Bodner in *Sefer Tiltulei*

It is difficult to reach any clear halachic conclusions regarding study of the humanities, but one must be careful about possible halachic restrictions.

Secular Studies/Talmud Torah

Up to this point we have discussed the halachic status of specific secular subjects but have not yet investigated the relationship between those subjects deemed permissible (or even advisable) and the individual's responsibility to study Torah. How much time may one spend studying secular subjects?

This topic is addressed by Ramo in a famous ruling:

Shabbat, the Halachot of *Muktza* (Lakewood 5741) writes that he asked R. Moshe Feinstein if these books are considered utensils of prohibited usage for Jews who are in fact in the habit of reading such books during the week. R. Feinstein responded: "Even though it is forbidden to read such books, nevertheless, in a home where they are read, they are not considered *Muktza*. The principle here is, any object whose use involves a violation of *Shabbat* is *Muktza*. However, an object which may not be moved not because of a prohibited *Melacha* of *Shabbat* but rather because of a different prohibition is only *Muktza* when that prohibition is observed. Therefore, for any Jew who truly follows the halacha, these books are *Muktza* (p. 138 No. 10 and Resp. in back of *Sefer*). R. Bodner mentions that he found a similar approach in *Daat Torah Orach Chaim* 308:3. He also received a letter from R. Shlomo Zalman Auerbach of Jerusalem who suggests the possibility of the distinction. The question of *Muktza* in the case of other types of books is a more difficult one. The *Shulchan Aruch* (307:17) quotes the Rambam who ruled that it is forbidden to study any books other than those which are under the category of *Talmud Torah*. The *Mechaber* then quotes the Rambam and the Rashba who permit the study of *ספרי חכמוֹת*. Thus, according to the Rambam all secular books might possibly be considered *Muktza* on *Shabbat* and *Yom Tov*. The *Mishnah Brurah* (308:164) quotes the *Gra* who says that even according to the Rambam there is no decree of "legal documents" and these books (*ספרי חכמוֹת*) are not *Muktza*. (See also *Aruch HaShulchan* 307:11). Therefore, medical books or journals as well as biology, chemistry, physics, etc. textbooks are not *Muktza* (See Bodner p. 140 and *Shemirat Shabbat Kehilchata* p. 386).

R. Yaakov Breisch in *Resp. Chelkat Yaakov* (Vol. I No. 84) was asked if a Jewish medical student may attend classes and observe operations on *Shabbat*. (Naturally no prohibited work is involved). In response he quotes R. Yaakov Emden (*Sheilat Yaavetz* 41) who prohibited the observation of medical operations on *Shabbat*. However, the *Shulchan Aruch HaRav* and *Mishnah Brurah* (306:21) permit this as long as it is not done with any regularity or

A man should study nothing other than Scripture, Mishna, Gemara and the *poskim* who rely upon them, and in doing so he will acquire this world and the next, and he should not study other wisdoms (*chochmot*). However, one is permitted to study other *chochmot* on an irregular basis (בָּאָרְקָרְאָה) as long as he does not refer to heretical books. Among the Sages this is called *Tiyul BaPardes* (Strolling in the Orchard). A man must not engage in this until he has "filled his belly with meat and wine," which is knowledge of what is forbidden and permitted, as well as all the laws of the mitzvot.⁴⁶

The Gaon of Vilna finds two sources for Ramo's ruling:

Ben-Dama, the son of R. Yishmael's sister, asked R. Yishmael: "Is a man such as myself, who has studied the entire Torah, permitted to study Greek Wisdom? R. Yishmael read before him the passage, "The Torah must never depart from your mouth, you must contemplate it day and night" (Joshua 1:8) and said – "Go and find a time which is not from the day and not from the night and during that time you may study Greek Wisdom."⁴⁷

"You shall discuss them" [words of Torah] – one must make the Torah of primary, not secondary importance. All of one's time should be spent in its study (literally – your dealings should be only with it), and you must not combine it with anything else. One should not say "I have studied the wisdom of Israel, now I will go and study the wisdom of the

calculated intention and as long as he does not discuss the subject with anyone else there. R. Breisch adds that this is certainly understandable in light of the fact that according to many *Rishonim* the practice of medicine involves a positive commandment. In *Nishmat Avrohom* (Vol. 1, p. 143) Dr. Avrohom Sofer writes that R. Shlomo Zalman Auerbach told him that only an actual doctor would be allowed to refer to medical books (or attend a seminar) on Shabbat, but a student who does not actually have to deal with patients may not do so.

46. Compare with *Shulchan Aruch HaRav* 3:7

47. *Menachot* 99B, *Yerushalmi Peah* 1:1.

nations." It is written "and you shall walk in them" — not depart from them.⁴⁸

In explaining the Ramo's use of the above sources, R. Baruch Ber Leibowitz, student of R. Chaim Soloveitchik and Rosh Yeshiva of Kamenitz, analyzes the nature of the mitzvah of *Talmud Torah*.⁴⁹

In discussing the biblical command "You shall teach them [Torah] sharply to your children (וְשִׁנְחַתָּם)" the Talmud deduces that "the words of the Torah are to be sharp and clear in your mouth so that if a person asks you a question you will be able to answer immediately without stammering."⁵⁰ In other words, notes R. Baruch Ber, a person should strive for mastery of Torah knowledge and see to it that his son and grandson should also become Torah scholars. This is the qualitative feature of the mitzvah.

But there is also a quantitative aspect. On the one hand, we are commanded בְּמִזְמָרָתְךָ וְלִלְלָתְךָ "You shall peruse them day and night", whenever possible. This would be the optimal observance. However, in the Gemara the opinion is expressed that "even if a man studies only one [biblical] chapter in the morning and one in the evening, he has fulfilled the [minimal] obligation."⁵¹ Is one entitled to opt for the minimal rather than the ultimate measure of *Talmud Torah*? R. Baruch Ber ponders this question in light of the ruling of Rambam:

How [should one divide up his day?] If a man is in business, he should be involved with his work for three hours, and nine hours of the day should be reserved for the study of Torah.⁵²

This dictum would seem to excuse one from learning only to

48. Sifri, Vaetchanan 6:7. See also *Torat Kohanim*, Mot 13:11 and the *Girsa* of R. Hillel.

49. *Birkat Shmuel*, *Kiddushin* 27.

50. *Kiddushin* 30a

51. *Menachot* 29a

52. *Talmud Torah* 1:14, Edition of R. Yoseph Kapach.

the extent that it is necessary to earn enough to afford the bare essentials. The *Shulchan Aruch* amplifies,

Whoever is unable to study Torah because he is incapable of doing so or because of other distractions which prevent him from studying [the required amount] should support others who learn.⁵³

To this the Ramo adds, "And it is considered as if he learned himself."⁵⁴ Thus, although the obligation of *Talmud Torah* applies to all men, we see that there are distinct levels of halachic fulfillment, but as yet have found no specific guidelines determining whether maximum observance of the mitzvah is required.

This crucially important aspect is addressed by R. Baruch Ber, who turns to the reverse of *Talmud Torah* — *Bitul Torah* — negating or nullifying Torah study. He concludes that *Bitul* may take either a passive or an active form. "Passive" *Bitul Torah* occurs when the man simply neglects the study of Torah (בשׁב ואל תעשה *Bitul Torah*). However, "active" *Bitul Torah* refers to a situation where the individual intentionally pursues other studies, for then the violator is "removing the words of Torah from his heart" (ביטול תורה בידים). Despite the fact that it is a mitzvah for a person to earn a living, and that he is permitted to receive training for the profession he will engage in, R. Baruch Ber contends that taking time away from Torah study in order to actively pursue a course of study not included in the perimeters of *Talmud Torah* is an act of "active" *Bitul Torah* even if he will eventually use this secular knowledge to earn a livelihood. Anytime Torah study is not of primary importance but is subordinated to another form of intellectual discipline, this is, in his opinion, *Bitul Torah*. R. Baruch Ber's understanding of the law is unique.

If a person studies another subject and says "Let us

53. *Yoreh Deah*, 246:6.

54. *Ibid.*

study the wisdom of the nations," meaning that he studies secular subjects on a regular basis and this form of education is important in his eyes and worthy of boasting about, then he has in effect abandoned the Torah because now there is something else which is important in his eyes, which is *Bitul Torah*.

He further uses this viewpoint in explaining the Ramo's permission to engage in "occasional, irregular" study of secular subjects but not regular study, for he maintains that the very act of undertaking study of even a permissible subject on a formal, regular basis, constitutes an attitude which reduces the primary position of Torah in the person's value system.⁵⁵

In a responsum which in a number of ways resembles that of R. Baruch Ber, R. Elchanan Wasserman makes an important distinction between studying secular subjects for the purpose of learning a trade and studying them for their own sake: "If the study [of secular studies] will not cause the individual to read books of heresy or associate with non-Jews, and he is only doing so for the purpose of learning a profession by means of which he will be able earn a living, then there is no prohibition, since such studying constitutes a mitzvah."⁵⁶ According to R. Elchanan the ruling of the Ramo is not referring to professional training, which in his opinion is permitted even on a regular basis (בקביעות), with one essential qualification:

55. R. Baruch Ber does not take into account the possibility of spending a few years studying secular subjects, so that once the individual is earning a good living he will be able to devote a great deal of time to the study of Torah. On the other hand a "ben-Torah" who has avoided any academic training might very well have to spend two or three times the amount of time as the "secularist" in order to support a family and consequently he will have much less time for the sake of *Talmud Torah*. The factor was not taken into account because R. Baruch Ber did not foresee the socio-economic conditions that evolved after WWII which would enable observant Jews to attend secular institutions of learning while remaining observant Jews in the fullest sense. This will be discussed in greater detail in the final section of the article.

56. *Kovetz Shiurim* II 47. See also *Chasdei Dovid* on the *Tosephta Avoda Zara* 1:3; *Birkei Yoseph* Y.D. 246:1.

What I have said applies to Jews in general. However, if a father sees that his son has a strong desire to learn and he has the potential of developing into a great scholar, then the statement of R. Nehorai applies: "I would prefer to abandon any profession in the world for the purpose of teaching my son only Torah."

In his responsum, R. Elchanan distinguishes between two types of *Bitul Torah* – *bitul* of the **חפצא** of Torah (eliminating the concept of learning Torah) and *bitul* of the **גברא** of Torah (eliminating the person whose whole being is caught up with learning Torah). The *heter* to learn a trade removes only the prohibition of not being engaged in Torah study (**ביטול חפצא דתורה**). In other words, since earning a livelihood is a mitzvah, the training required is part of that mitzvah, and the halacha has determined that for such a purpose time may be taken from the study of Torah. However, this leniency cannot apply to an individual (**גברא דתורה**) who has the ambition and qualifications to develop into a Torah scholar.

A similar approach may be discerned in the novellae of the *Chatam Sofer*: "Jewish children should not learn any trade or study any *Chochma* other than Torah ... Only when he is older and has not succeeded in the study of Torah may we teach him a trade."⁵⁷ If the child is not developing into a person immersed in Torah study (**גברא דתורה**) all that remains is the actual obligation to study Torah (**חפצא דתורה**) which can minimally be discharged by learning "one chapter in the morning and one chapter in the evening." This requirement may easily be fulfilled even by an individual preoccupied with training for his profession.

R. Elchanan concludes his responsum with a basic question: why are we forbidden to study secular subjects for their own sake on a regular basis (**בקביעות**)? He suggests two possible reasons: Firstly, it is a mitzvah to learn Torah whenever possible. His second explanation is a subtle and thought-provoking suggestion – that we are forbidden to give secular studies the same recognition and importance as Torah study.

In a responsum concerning engaging in secular study, R.

Avraham Bloch sets four preconditions:

1. The study of Torah must precede secular studies in both time and importance. This applies also to women who must study those areas of Torah which apply to them.
2. In relation to *Talmud Torah*, secular study should be considered no more than study for a trade.
3. Every father's goal should be to raise children who are knowledgeable in Torah. This is particularly important in the case of children who demonstrate above-average intelligence, in which case the father must attempt to provide a Torah education to the exclusion of any secular studies.
4. In all instances it is forbidden to establish a system of education that would cause the world to be void of any true Torah scholars. Even in a situation where the individual is not forbidden to study secular subjects, there nonetheless exists an obligation on the part of Jewish leaders to make every possible effort to ensure that our children will develop into students of the Torah. "This is a great mitzvah and a cause worthy of great self-sacrifice."⁵⁷

In a recent responsum, R. Moshe Feinstein expresses strong reservations about engaging in secular study.

The whole concept of pursuing a secular education even where there is no problem of improper subject matter or co-ed classes is forbidden for *Bnei Torah* (Torah scholars) and Yeshiva students who are capable of growing in their knowledge of Torah and fear of G-d for in doing so they would be "rejecting eternal life." This prohibition is in effect even after the individual has developed into a great scholar In our generation it is impossible for young men to

57. *Chiddushim Bava Bathra* 21A.

Hama'ayan, Nissan 5736. In his will R. Chaim Berlin wrote: "The Netziv devoted his life to ensure that secular studies would not be included in the curriculum of the Yeshiva in Volozhin, and for that reason the yeshiva was eventually forced to close. He commanded never to allow this [a dual program] and not to accept any *heter* under any condition. He told me that G-d hinted to this in the Torah where it says "to separate between the holy and profane." (Quoted in *Shaarei Talmud Torah* p. 294).

develop into Torah scholars, which requires all the strength that G-d has granted them, if they become involved in secular studies. Such an undertaking causes them to waste their talent and abilities on secular studies, and eventually the secular education will become more important to them than their Torah studies. This is inevitable since the evil inclination convinces the individual that if he wishes to earn a living he must temporarily allot more time to his secular education and eventually he will abandon his Torah studies altogether. Even without taking this possibility into consideration, it is simply impossible to grow in Torah learning or become even a "small" *Talmid Chacham* or *Ben Torah* if one "steals" time, effort, and talent from his Torah studies for the sake of his secular studies. Instead of progressing, such a person will descend lower and lower. And it is obvious that after one has become somewhat involved in secular studies he will see how those who attend college become much more proficient in their secular knowledge, and as a result of this, he will feel compelled to attend a non-Jewish school in which are found all the "abominations of the world," believing that he will only study there for a short time and convinced that he will not be negatively affected. Everyone understands that in truth such reasoning is incorrect. At any rate it is certain that having attended such a school he will not develop into a *Ben Torah* and certainly not into a *Talmid Chacham*.

Besides this, every *Ben Torah* and yeshiva student must take into account the "*Churban Torah*" (destruction of the Torah) that is taking place in the world, which obligates him to make every effort to become a Torah scholar and G-d fearing Jew who will be capable of rendering halachic decisions. This is absolutely essential for the entire community of Israel.⁵⁸

58. *Iggerot Moshe*, Y.D. III No. 82.

R. Feinstein understands that his approach will neither be understood nor appreciated by most Jews, even those who are observant. His appeal to *B'nei Torah* and yeshiva students is not primarily halachic in nature. Rather, he seems convinced that any *heterim* or halachically valid "loopholes" that might have applied in the past may no longer be considered. Due to the pressures of living in a modern society which is itself much more secular than that of the past, the student must devote all of his attention and energies to the study of Torah if he is to succeed. Although R. Feinstein recognizes *heterim* for individuals who have already become involved in secular studies in order to earn a living, he sees them as a concession, not an optimal standard.

In effect, R. Feinstein addresses the community and its responsibility to provide an appropriate environment for the development of *Talmidei Chachamim*. He does not mention specific halachic prohibitions that might be involved in studying secular subjects but is primarily concerned with a potential abandonment of the Torah which might result from pursuing a secular education.

The "Rogatchover," R. Yoseph Rosen, also discusses the topic of secular study in a responsum, but his style is cryptic and difficult to understand. In an attempt to unravel the responsum, R. Aryeh Carmel suggests that the Rogatchover differentiates between the teachings in the first *parsha* of the *Shema* and the directives in the second *parsha* (paragraph). Speaking in the singular, the first *parsha* addresses the individual. Thus, as Rambam has taught, the study of "outside" [the Torah] wisdom is permitted, and a father may teach it to his son. However, in the second portion of the *Shema* the Torah is speaking to the Jewish people as a group, as is evident from the plural form of address. Participation of the Jewish community in secular education has a different halachic status than the individual's private program of secular studies. It would seem that the Rogatchover considers it forbidden for the Jewish community to establish a secular curriculum to be taught in conjunction with Torah.⁵⁹

59. Published in *Hama'ayan*, Nissan 5736.

For different reasons, R. Avrohom Weinfeld⁶⁰ contends that the entire issue of secular studies as a halachic issue has no bearing upon the question of whether or not one may attend a modern university. He notes that R. Elchanan Wasserman wrote that one of the conditions under which secular subjects may be studied is that in doing so the student is not forced to socialize with non-Jews. He also perceives a halachic problem in men and women attending classes together on a regular basis.

Another practical consideration discussed by R. Weinfeld is the difficulty of becoming proficient in a secular field while complying with the Ramo's restriction that it should be studied only occasionally (בְּאַקְרָאִי) and the prerequisite of "first filling one's belly with *shas* and *poskim*." In modern times even a college education is considered insufficient training for many professions, and some type of post-graduate program must be attended. This would seem to negate the whole concept of "occasional" secular study. Besides the problem of time allocation, a modern secular education is intellectually demanding. The Jerusalem Talmud states: "They (secular studies) were given for the purpose of *Higayon* (contemplation), not *Yegiya* (toil), as one would read a letter."⁶¹ For this reason also, R. Weidenfeld is opposed to secular study.

Secular Studies — Sacred Obligation

We have repeatedly emphasized the difficulty of presenting clear halachic guidelines when dealing with a topic that has rarely been discussed in a halachic context. Nevertheless, thus far we have attempted to review those teachings which at least conform to the traditional format of a "*psak halacha*."

But it would be both unfair and unwise to ignore the fact that a number of great Torah authorities of modern times have actively sought some type of synthesis of Torah and secular knowledge. In addition, there are countless others who have come to view a

60. *Lev Avrohom* p. 271.

61. *Resp. Lev Avrohom* p. 268-269.

secular education as a positive alternative for the majority of young Jews who are unable to make a lifetime career out of Torah study. These authorities all share a deep commitment to halacha as well as to the spirit of halachic Judaism. It is therefore only proper to preview at least briefly their approaches to our issue despite the non-halachic quality of the material involved.

R. Samson Raphael Hirsch — Torah Im Derech Eretz

R. Hirsch stands alone as the proponent of an educational system whose very foundation rests upon the inclusion of secular studies in the yeshiva curriculum. As is well known, he named his system after the talmudic phrase to which he believed it conformed: *Torah im Derech Eretz*.

R. Shimon Schwab, the present Rav of the *kehilla* founded by Rav Hirsch writes:

At all periods of our history there were *gaonim* who added secular knowledge to their profound wisdom. There is a colorful roster of immortal masters such as R. Saadia Gaon, the Rambam, Maharal and so forth, all the way down through the ages till the Gaon of Vilna. They have all successfully employed the so-called "outer-wisdom" as the "spice makers and the cooks" for the royal table of the divine teaching. What R. Hirsch propagated is not really the principle itself as much as the introduction into *chinuch*, i.e., the educational program for the Jewish school and for the growing youth. This is the true *Chiddush* (innovation) which Hirsch initiated. There were always learned adults who had a positive attitude toward worldly knowledge which they acquired *after* they had mastered *shas* and *poskim*. Hirsch innovated a school program for *children* starting from the elementary level all the way up to higher education during the formative years of life.⁶²

62. *These and Those*, N.Y. 1966 p. 15-16. In this small booklet R. Schwab presents an imaginary debate between an advocate of R. Hirsch's *Torah im Derech Eretz* and a member of the Torah-only school. Like other scholars who are well-versed

What exactly did R. Hirsch mean by *Torah im Derech Eretz*? Dr. Mordechai Breuer points out that in his writings R. Hirsch used the term "Derech Eretz" in a number of different ways, and it is often difficult to determine which form he was referring to. In his commentary on *Pirkei Avot*, R. Hirsch writes:

The term *Derech Eretz* includes all of the situations arising from and dependent upon the circumstances that the earth is the place where the individual must live, fulfill his destiny, and dwell together with others, and that he must utilize resources and conditions provided on Earth in order to accomplish his purpose. Accordingly, the term *Derech Eretz* is used primarily to ways of earning a living and to the social order that prevails on Earth, and to things pertinent to good breeding and general education.⁶³

R. Schwab explains:

The *Torah im Derech Eretz* approach starts out from the premise that the Torah must rule over all

in the writings of R. Hirsch, R. Schwab rejects any interpretation of *Torah im Derech Eretz* as being a *תִּשְׁעַת תְּהִירָה* specifically meant to stem the tide of assimilation and reform in Western Europe. This was the commonly accepted belief among the Lithuanian and Chassidic admirers of R. Hirsch. It is evident from countless sources that for R. Hirsch himself the concept of *Torah im Derech Eretz* was neither a compromise nor concession, but rather the ideal Jewish world outlook. Dr. Mordechai Breuer in his study of *Torah im Derech Eretz* (*Hama'ayan* 5736) quotes R. Hirsch: "Torah im Derech Eretz is not merely a last resort to rescue the sinking ship of German Jewry!" "Torah im Derech Eretz" was engraved on the cornerstones of the yeshiva in Frankfort as well as the main synagogue. Two great Roshei Yeshiva, R. Baruch Ber Leibowitz and R. Elchanan Wasserman specifically wrote that they viewed R. Hirsch's system as a *תִּשְׁעַת תְּהִירָה* (temporary decree) on the part of a saintly and brilliant educator. In this respect they seem to have been mistaken. R. Yechiel Yaakov Weinberg, world renowned *gaon* and *posek* who studied in the Lithuanian yeshivas and was also completely proficient in the vast writings of R. Hirsch, concurs emphatically with the German scholars in maintaining that R. Hirsch sincerely believed that *Torah im Derech Eretz* is the *true* approach to Judaism. (*Seridei Esh*, Vol. IV p. 366-367). See also R. Avraham Yoseph Wolf, *Hatekufa U'Ba'ayotaha, Bnei Brak*, 5741.

63. *Avot* 2:2

manifestations of human life There exists nothing truly human anywhere outside the scope of the divine teaching All contingencies of human life varying according to time and circumstance, such as all of our actions or behavior, our attitudes, our relationship to man and beast and our positions within nature and history — they are all subject to the jurisdiction and evaluation of the Torah. What follows is that the Torah scholar should be well-informed of the "ways of the earth" ... he should be well aware of what happens in the world which surrounds him for he is constantly called upon to apply the yardstick of halacha and the "searchlight" of *hashkafa* (ideology) to the realities which confront us. What follows is also that the greater the wisdom of Torah, the more mandatory it becomes that this wisdom is conveyed to the Jewish contemporary world in a language which our generation understands.⁶⁴

In the system of R. Hirsch there is actually no such thing as wisdom outside the Torah. *Torah im Derech Eretz* expresses the belief that Torah has the strength to function as the creative and dynamic force behind all facets of life and culture, thereby forcing them to be faithful servants to the divine truth.⁶⁵

Interestingly, despite his insistence on the above type of synthesis, R. Hirsch in formulating the curriculum of his yeshiva always maintained separate Torah and secular divisions, usually taught by separate instructors. He continuously emphasized that Torah must be the major concern and that secular subjects are only ancillary. If one is not able to study both, Torah study takes precedence.⁶⁶ In practical terms R. Hirsch repeatedly warned his followers to be selective and careful: "If there is no Torah, there is

64. *These and Those*, p. 13-15

65. Breuer, *Hama'ayan*, Nissan 5739, p. 15. See also R. Yitzchok Breuer, *Moriah* p. 153; R. Eliyahu Munk, *Nachalat Tzvi*, Vol. I p. 29; and R. Hirsch's Commentary to *Bereshit* 14:13, 17:1 and *Chorev* p. 2-5; also, *Seridei Esh*, Vol. IV, 368.

66. See *Sifri*, *Devarim* 6:7

67. M. Breuer p. 16 No. 95.

no *Derech Eretz*. If a culture or discipline does not bring one to Torah but rather seeks to replace it then it is certainly not the path which leads to the Tree of Life.⁶⁸

R. Schwab further elaborates:

"The two (*Torah* and *Derech Eretz*) are not equal partners, nor may it be twisted into *Derech Eretz* plus *Torah*", i.e., worldliness wearing some kind of Lilliputian yarmulka. It is neither a synthesis of Torah with assimilation nor a bloodless orthopraxy blended with earth-bound Americanism. It is none of these. It is *Torah im Derech Eretz*. It means: G-d's Torah in its totality utilizing *Derech Eretz* as a means to bring about the Torah's full realization.⁶⁹

The followers of *Torah im Derech Eretz* raise certain objections vis-a-vis the "Torah only" school:

1) The lack of academic standing may lower the respect for Orthodoxy in the eyes of the world. It may add immeasurably to the growth and influence of semi-Jewish anti-Torah movements and philosophies.

2) The lack of secular education will make it very difficult in our age to find normal means of income outside the religious teaching profession. Most trades — the Talmud obligates a father to train his son in a trade which is "easy and clean" in order to keep him away from crime or dishonest dealings⁷⁰ — are neither "easy" nor "clean" unless based on professional training, most of which requires at least some academic education.

3) The lack of academic education will eventually result in the complete absence of Orthodox physicians and psychiatrists.

4) The lack of Orthodox lawyers and economists will force Orthodox institutions and organizations to depend on transgressors and violators of the Torah, on the learned heretic to become the spokesman for holy causes.

68. *Bereshit* 3:25

69. *These and Those* pp. 44-45. See also pp. 17-20

70. *Kiddushin* 82b.

5) The discouragement of academic education becomes a decree that most of the community cannot adhere to. No responsible Torah leader would wish to insist on a mode of conduct that cannot be realized in practice by most of the people most of the time.

6) Are we not in need of principals and teachers for the (mandatory) secular departments of our schools? How dare we entrust our children to non-Jewish or non-observant secular teachers and principals?

7) The *Torah im Derech Eretz* approach has a keen sense of sympathy with the diligent but not exceptionally gifted student. What sustenance does the yeshiva world offer the pedestrian student, one who is not endowed with special talents and does not happen to have wealthy parents? Would it not be irresponsible to recommend him as a teacher for our children, who are certainly entitled to get the most capable educators? We believe that the *average* yeshiva student should be trained to become what the *average* yeshiva students have become for the last few thousand years — *Ba'alei Batim*, heads of households, who are G-d fearing and who set aside time for the study of Torah to the very best of their abilities.

8) College education is only one of the *Derech Eretz* possibilities which present themselves today to our youth in search of gainful occupation, but is not the only way.⁷¹

R. Schwab also makes a fundamental distinction between the pre-Nazi and post-Nazi periods:

One of the main differences is that the temptation of heresy and agnosticism are not lurking mainly inside the colleges. Every library, every corner bookstore contains as much *apikorsus* (heresy) as the lecture halls of a university. There are newspapers and magazines in English as well as in Hebrew and Yiddish obtainable everywhere which are filled with anti-religious, anti-Torah dynamite The brightest student is confronted with overt and covert heresy

71. *These and Those* p. 26-27.

wherever he turns. To ignore this shaking state of affairs does not minimize the acute danger. On the other hand, *Torah im Derech Eretz* education may forge the intellectual armour to beat the rebellious ideas into submission.⁷²

Rav Kook – Kodesh and “Not-Yet” Kodesh

In his evaluation of the quality of *chinuch* (education) in Israel in 1912, Rav Kook identified three forces which were vying for power at that time:

1) The first force is that of the “old and holy settlement” which prohibits the study of any foreign language or secular subject and refuses to alter in any way the traditional method of education.

2) The second force is one which has recently developed and contends that it is our holy responsibility to give strength to the spirit of G-d which rests upon his nation and to proudly raise the banner of Torah and mitzvot by studying all cultural forces existing in the world.

3) The third force is completely secular and its objective is to obliterate all that is holy and to concentrate its energies on man’s temporal, physical needs.

Rav Kook then wrote: “The second force is truly the one which is worthy of support and encouragement. It is forbidden to allow history, philosophy, and poetry to be associated exclusively with those people who are seeking to destroy the Torah and faith in G-d.”⁷³

In one of his letters R. Kook justifies his “rebellion” against the accepted ruling of the Beth Din of the old *Yishuv* (settlement) which prohibited all secular studies in Jerusalem:

Now, because of our present condition, the prohibition rests upon the necks of G-d-fearing Jews

72. Ibid, p. 27

73. Tzvi Yaron, *Mishnato Shel HaRav Kook*, Jerusalem 5743 p. 189-190, paraphrasing R. Kook’s statements in *Iggerot Ra’aya*, vol. II 79-80 and Vol. I no. 148.

like an iron yoke since it leaves them no means of educating their children. They clearly see that it is impossible to continue existing according to the new conditions of life without knowing any languages or secular subjects. All these people who have rejected the Torah have placed their children in schools which prepare them for the battle of life and only the children of parents who are devoted to Torah and faith remain weak in the paths of life ... We must prepare the cure before the ailment. I have made my opinion known that because of [the special conditions now] we must prepare our sons who are brought up according to the Torah to fight in the battle of life by teaching them languages and secular subjects.⁷⁴

Understandably, R. Kook enthusiastically praised R. Hirsch's *Torah im Derech Eretz* yeshiva in Germany.⁷⁵

From the above statements one might receive the impression that R. Kook viewed secular studies as a necessary evil which had become indispensable because of the social and economic conditions of the twentieth century. But this conclusion would ignore his profound and complex philosophy of "Kodesh" and "Chol" (sacred and profane) expounded in his two classic works *Orot Hakodesh* and *Orot Hateshuva*.

How shall man obtain a conception of the majesty of the Divine so that the innate splendor residing within his soul may rise to the surface of consciousness,

74. *Iggerot*, Vol. I no. 139. See also Vol II 254, 257, 270. It must be emphasized that R. Kook never intended to do away with European style yeshivot of the old *yishuv*. In a letter to R. Yehuda Leib Maimon, R. Kook wrote: "In reality the Torah and its light will spread forth to Israel from the old *Beit Midrash* and its diligent students. The destruction of these institutions would bring terrible calamity upon the Jewish people, G-d forbid. If heaven forbid the old Talmud Torahs and yeshiva are closed or even if they are joined together with secular departments under the control of G-d fearing Jews, we cannot feel secure that this is for the best. We can only hope that if we preserve the holy institutions of the old *yishuv* then perhaps the new yeshivot will be successful." See Yaron, p. 197 notes 9-10.

75. *Iggerot*, Vol. I, No. 182

fully, freely, and without distortion? Through the expansion of his scientific facilities, through the liberation of his imagination and the enjoyment of bold flights of thought, through the disciplined study of the world and of life, through the cultivation of a rich, multifarious sensitivity to every phase of wisdom, all the philosophies of life, all the ways of diverse civilizations and the doctrines of ethics and religion in every nation and tongue.⁷⁶

This vision was articulated in his controversial address at the inauguration of the Hebrew University of Jerusalem in 1925.

There are two spiritual tendencies in Israel: the one an inner and wholly sacred one tending to deepen his soul and to spread the light of Torah from within. This aspiration is served by the Torah, the stronghold of Israel's soul, and by the talmudic schools established in our midst from earliest times for the glory of the Torah. This spiritual aspiration is clearly defined and resolute, neither fearing nor yielding to any obstacle ... The second spiritual tendency of the nation serves not only to deepen the inner sacredness of the Torah but also serves as the medium for the absorption and propagation of ideas, of Jewish conceptions and values from the Jewish world into the wide world of nations. For this purpose we have been set as a light for the peoples and for the absorption of secular learning from without, from all humanity; to adapt to our own life the good and the sublime which we receive [from secular knowledge] and to transmit it again to the world at large.⁷⁷

Dr. Norman Lamm of Yeshiva University explains R. Kook's approach as follows:

The merging or synthesis of Torah with wisdom is not meant to make up for some lack of Torah but rather to create something new and original in the

76. Quoted in *Torah U'mada Reader* p. 35

77. *Ma'amarei Haraya* p. 306, translation in *Torah U'Mada Reader*, p. 37.

world of the spirit through these combinations This implies the significant notion which R. Kook later states explicitly, that there is nothing absolutely profane or secular in the world. There is no absolute metaphysical category called *chol* (profane); there is only the holy and the not-yet holy. This version of the synthesis is the very antithesis of secularism which recognizes the sacred only in its insularity. R. Kook's centrifugal "*kodesh*" is so overpowering and outgoing, that "*chol*" or the profane loses its absolute character even before its encounter with the sacred.⁷⁸

R. Kook's philosophy apparently influenced one of the foremost thinkers of modern-day Judaism, R. Yitzchok Hutner, who studied under him during his short stay in Israel. In a letter written in 1954 R. Hunter responds to a troubled disciple torn between his aspirations as a *ben Torah* and the secular career he wants to pursue.

The general impression I have received from your letter is that in your opinion it is obvious that a secular career creates a "double life." I needn't remind you that I have never been one to consent to any form of a double life: If someone rents a room in a building for the purpose of an occasional visit, I will admit he lives a double life. However, if someone rents one apartment in which there are *two bedrooms* he has a *broad* life, not a double life!

You, my dear beloved friend, must not see yourself in this double vision as leading a double life. [Our sages have taught] whoever lengthens the word "*echad*", his days and years are lengthened [literally, this refers to the pronunciation of the word "*echad*" in the *Shema*]. All your life must be within the category of an extended "*echad*." I am very troubled that you overlooked this. Numerous points located next to each other or above one another indicate multiplicity

78. Norman Lamm, "Two Versions of Synthesis" in *Faith and Doubt* (New York: Ktav), p. 69-82.

(ריבוי), but when all these points revolve around a center point, it is then *one* circle. This, my friend is your obligation in life, to establish in the center of your life the *echad* [One] and then you won't have reason to worry about a double life. Every additional point that you acquire will simply widen the circle, but the *achdut* [oneness] will never move from its place ...⁷⁹

Despite his vision of the creative potential of the University, R. Kook concluded his address on a somewhat skeptical note in which he expressed his fear and concern of the imminent danger of a secular education which would ignore its *Kodesh* responsibility.

It is quite clear that of those circles which welcomed these two tendencies [mentioned above] without apprehension and with careless optimism and rejoicing, but few of their descendants have remained to participate in our difficult and sacred task of rebuilding our country and reviving the nation. The great majority of them have been assimilated among the nations The only ones who have been truly creative are those who have sat securely within the walls of our spiritual fortress, in the tabernacle of our Torah, in the holiness of the commandments and the laws. Only those who have both given and received values and conceptions through the golden mean between Israel and the nations, ... only those have truly created.

Both R. Hirsch and R. Kook were prolific writers who published numerous volumes on all areas of Jewish thought. However, the most influential recent member of the pro-secular studies school is a great scholar whose powerful influence has been transmitted much more by the spoken rather than the written word. The few articles that have been published by R. Joseph B. Soloveitchik have been the subject of a great deal of study and debate. He too is an originator of a complex and profound

79. *Pachad Yitzchok, Iggerot U'ketavim*, no. 94.

philosophy of *kodesh* and *chol*, striking in its Lithuanian intellectualism and chassidic mysticism. However, his personal life and presence in Yeshiva University have probably been more influential than his philosophic expositions. Therefore, I will not undertake an inquiry into the complex philosophy of this great talmudist, knowing full well that for the most part his opinion concerning our subject falls under the category of "Oral Torah", *תורה שבעל פה*, and not "Written Torah". It is proper to comply with the halachic dictum, "דברים שבעל פה אי אתה רשאי לאמורם בכתב" — things which were intended to be transmitted orally may not be written.⁸⁰

In conclusion, let us note that the halachic issues concerning the study of secular topics include the nature of the subject matter and the caution not to "abolish" Torah study, neither in a qualitative nor a quantitative sense.

Moreover, there are important non-halachic values associated with the issue, in that the Jewish community as a whole, and each individual member of that community, bears the responsibility for maintaining Torah as the highest value of Jewish life. There are also many psychological and philosophical dangers in the attainment of secular wisdom which threaten the individual's commitment to Torah and mitzvot.

Our religious leaders do not agree upon an answer to the question, as posed by Rabbi Schwab: "Is the Torah scholar allowed or advised to include 'outside wisdoms' into his studies?" In his analysis of the problem, R. Schwab comes to the conclusion that we are dealing with a classic dilemma (*תיקו*), "something which must await its final answer until the Messiah comes. He may give the badge of honor to either school, or he may come forth with the verdict, 'These and those are the words of the living G-d.'"⁸¹

80. See "Kodesh and Chol in World Perspectives" originally delivered by R. Soloveitchik in 1945 and reprinted in the *Torah Umada Reader* p. 20-32. See also Dr. Aviezer Ravitzky's "Kinyan Hada'at B'Haguto" in the *Sefer Hayovel* dedicated to R. Soloveitchik published by Mosad HaRav Kook, 1984, vol. I pp. 125-151.

81. *These and Those*, epilogue.