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

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

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Jewish Education and Outreach

Dr. Marvin Schick

It means little to say that American Jews are living in history. Much the same can be said about the other ten billion or so humans who have occupied this earth during this long, often terrible, century. The world is changing and always has; what is different is the pace of change, how rapid it has become, so that significant events or personalities may have no more than a Warholian allotment on center stage.

It is necessary, just the same, to note that American Jews are living in history, for their world is greatly changed from what it was a handful of years ago, and it is a good bet that early in the next millennium, their world will be different from what it is today. There is no equilibrium in American Jewish life, only developments which are vague and puzzling, as well as contradictory.

In ways that are perhaps unprecedented in the Jewish experience, Judaic abandonment runs parallel with the quest for Judaic commitment, not merely across the larger communal canvas but in the lives of so many of us. The personal stories of a great number of American Jews contain strong, incontrovertible evidence of the impact of advanced assimilation, as well as the seeds of greater religiosity. Intermarriage is challenged, even as it is legitimated. In tens of thousands of Jewish homes, Judaic loss is accompanied by the striving for Judaic growth. Modernity is eagerly welcomed, including in ways which are antithetical to

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traditional Judaism, even as and where there is a return to tradition.

Although certain things in American Jewish life are clear, we hardly can know what to make of these incompatible tendencies. Sociological projections are available, as always, but outcomes are uncertain. Logic and experience teach that assimilation is the stronger element in the contradictory compound, for it is constantly reinforced in the lives of most American Jews. Assimilation therefore should be the dominant factor in determining the ultimate Jewish commitment of Jews at risk. But life has a way of being perverse in such things.

Of the contradictory strands in Jewish life, what is new is the desire to be more Jewish, even in some religious sense. Judaic abandonment, after all, has been with us from the day that our Mayflowers docked on these shores. There has scarcely been a day in the twentieth-century when the sun did not go down with there being fewer Americans identifying as Jews than there were when the sun went up.

The added element, therefore, is commitment, tradition, Judaism. It is severely compromised by our losses, by the compromises that we have made. Too many American Jews have walked out of the open door of Jewish life into an America which provides for them not even fading signposts of a fading Jewish past. Some will return, but not many, in ways that shall remain a mystery.

It is easy to describe, statistically or impressionistically, the losses. What is tougher – and here the contradictions come into play – is to calculate the toll exacted by advanced assimilation in the lives of Jews who continue to identify as Jews. Intermarriage is a critical issue, even for these Jews, and it is a barrier to subsequent Jewish growth. It is too facile, too anti-historical, too anti-sociological – not to mention too anti-halachic – to regard intermarriage as a

process that can be readily reversed. More often than not, the losses are irreversible.

Just the same, intermarriage is in some respects a puzzling phenomenon, for which the next century may provide answers that are not now available.

As for the desire for greater religiosity and commitment, it may turn out that what is now being perceived – transformations in synagogue life, the new religious vitality, new directions in the Federations and nearly everywhere in our vast organizational apparatus – is a mirage which disappears when one draws closer or with the passage of time.

We cannot know. People go toward mirages because they cannot be sure of what awaits them down the road. Can we be certain that all of the stirrings are much ado about very little, that all of the new outreach and talk about continuity, as well as the greater emphasis on education and other Jewish experiences, are just a desperate flailing about by a people heading rapidly toward a Toynbeeian dustbin of history?

We have to try to make sense of the upsurge in interest in Judaism. What are its sources? What lessons can be learned from our recent experience? And what steps can be taken to strengthen the as yet modest return to traditional belief and practice?

These questions have a special urgency when we consider the situation of Jews at risk, they being the prime candidates for the next round of doleful statistics on Jewish loss. These are Jews who participate in our communal life, at times actively, often including its religious components. They are avidly committed to Israel, they read Jewish publications, they join Jewish organizations, they contribute to our causes. Yet, they are at risk because assimilatory forces intrude

constantly into nearly every nook and cranny of their lives, often being welcomed by these Jews who at once want to remain Jewish even as they warmly embrace nearly all of the fruit of modernity and assimilation. These Jews believe that they can establish an equilibrium between Judaic retention and Judaic abandonment. If we use the experience of previous generations of Jews who were at risk as a yardstick for assessing the prospect for the current generation to remain Jewish, the outlook is not promising.

These Jews at risk require urgent communal attention. Our outreach and continuity efforts should be geared toward them, although what is done for them is likely to penetrate as well into the lives of a relatively small number of American Jews who are more distant from Judaism.

The conventional approach to Jews at risk is to establish multiple modes of intervention in their lives through programs which have a Jewish content. There is formal education in day schools and other settings for the young, as well as modes of informal education, including youth groups, camping, Israel experiences and a great deal more. During the college years, there are campus activities. For adults, there are voluntary study experiences, beginners' services and Judaic-strengthening activity in nearly every Jewish organization or environment.

The great expansion of these activities in recent years raises the threshold question as to whether they can be effective. After all, their targets are Jews at risk, if only because Jews who are significantly more assimilated are significantly less likely to pay attention to Jewish messages or programming. In fact, Jews at risk already have a high quotient of Jewish content in their lives. They are eager for news about Israel, they write checks to Jewish causes, they receive Jewish publications and they usually belong to one or more congregations or Jewish organizations. In the

aggregate, many millions of Jewish stimuli or messages are directed at them each year. Why are we to believe that Jewish programming of the sort now being undertaken will have sufficient additive potency to accomplish what has not been accomplished by the ordinary flow of Jewish communal life?

This issue can perhaps be dealt with by raising another question which concerns the American Jewish preference for projects.

A project orientation is in line with the strong inclination towards social engineering that has informed western society for nearly two centuries. Faith has been placed in intervening activities which seek to correct or improve a wide range of social pathologies. These activities – in the general society they are usually funded by governments – are obviously expected to bring about results which could not be obtained in their absence.

It would be cockeyed to dismiss as cockeyed optimism or missteps the thrust of two centuries of social policy. But it would also be a mistake to refuse to pay heed to overwhelming evidence that social engineering often does not work because the targeted problems are too deeply rooted or arise in sources which are beyond the reach of proposed remedies. Put otherwise, the external environment which is relevant to, yet also apart from, the insular world where the intervention occurs can have a major bearing on the efficacy of the intervention. As one obvious example, failures in contemporary education are more often than not the consequence of pathologies at home or in the street or somewhere else in the larger society which strongly limit the capacity of schools and educators to do what is expected of them.

This is a capsule view of a large subject that is familiar ground. It is sufficient for what needs to be said about Jewish

programming which aims for continuity and commitment, although this analysis must be prefaced with an observation about the organization of American Jewish life.

A project orientation also accords neatly with our communal structure. We are blessed – some would say, cursed or saddled – with a monumental multi-billion dollar complex of organizations that to my way of thinking is exquisite lunacy, although doubtlessly our dinosaurs and hippopotamuses have their supporters. These groups are in the business of marketing their activities, nearly always with an excess of public relations and fund-raising. As American Jewry has become more alert to the obligation or imperative to provide for its continuity, there has been a shift away from universalistic programming toward activities which presumably are more Judaic in their purpose and content.

This new project orientation, which essentially is a continuation of the way business has been done, is sincere, although it is accompanied by too shallow a reflection on whether the desired goals can be accomplished. Too often it is as if the launching of a continuity or Jewish education initiative or merely the invocation of the right words – continuity, outreach, Jewish education, commitment, identity, Israel experiences – are sufficient in themselves.

While the organizations and Federations which are essentially secular in their leadership and purpose usually do not know for what they sin, there is within American Jewry an intellectual elite of experts, consultants, etc., which populates our thriving new world of private foundations and institutes and which does know better. These people too often live too comfortably by peddling pap and patent medicine, always making sure to label their products as good for Jewish health.

This is not to suggest that there is no role for projects in

the struggle to fortify the Judaic commitment of Jews at risk or that an intervention strategy, such as is now being undertaken, can bear no fruit or little fruit. A case can be made for this approach, provided that restraint is exercised in the claims being made on its behalf.

The question of what strengthens Jewish life is the flip side of the question of what weakens it. If we examine the American Jewish experience during the many decades of Judaic decline – this period used to be called a Jewish Golden Age – it is apparent that what was primarily in short supply were not programmatic options which could reinforce Jewish commitment but a mood or climate of opinion favorable to Judaic retention.

For most of American Jewish history, synagogue participation was significantly above what it is today. That was true, as well, of Jewish literacy and attachment to kashruth and most other observances. All around, there were activities with a Jewish content. And everywhere there was Jewish loss.

What was lacking was an environment – a set of attitudes – conducive to meaningful Jewish continuity. The climate of opinion within Jewish life contributed greatly to Judaic abandonment. It was all right to leave the synagogue after Bar Mitzvah or to stop eating kosher or to violate Shabbat or to abandon one observance after another, as layers of skin being pulled away from the flesh.

To be sure, intermarriage rates were low and this masked the extent of Jewish decline and abandonment. The low intermarriage rate resulted from the twin circumstances of relatively limited Jewish social mobility and the recognition that intermarriage – probably alone among all forms of anti-halachic behavior – was not regarded as legitimate.

In the prevailing environment, all else was negotiable,

all else could be discarded. For much of American Jewish history, Jews who were being lost were far less assimilated in a cultural sense than today, particularly including today's Jews who are at risk and who participate in our communal life. But there was a constant movement away from Judaism, rapidly and without much heed being paid to Jewish messages.

This process of abandonment, in which the general Jewish environment rather than its institutional particulars is decisive, can be discerned in all other major periods of voluntary Jewish loss. There were always programs and institutions which could preserve the old ties. They were weak barriers against ephemeral, yet potent, attitudinal forces which impelled many away from Judaism. Some of the old institutions and activities adapted to the new climate by becoming less religious and more secular and by accepting Judaic abandonment. This, too, has a strong echo in American Jewish history.

Although Jewish history overall is far more the story of Jewish loss than of Jewish gain, there have been periods of Jewish gain, as in the time of King David and King Solomon. In these periods, the climate of opinion decisively contributed to an embrace of Judaism.

Jewish loss or gain is, to repeat, substantially a response to the environment which in part can be shaped by activities. If Jewish loss has been the dominant tendency in American Jewish life for 100 years, it is because that was seen as the right thing to do. If we now witness, albeit to a far lesser extent, a quest for commitment or religion, it is because in some quarters that is now the right thing.

It has become conventional and convenient – perhaps especially in Orthodox ranks – to regard the return to Judaism – the *teshuva* phenomenon – as the outcome of planned activity aimed at promoting return. In one familiar scenario,

American youth in Israel go to the *kotel* where they are asked if they want to study about Judaism. For those who respond affirmatively, the process of return is underway. Except occasionally, I doubt that this is what happens. Rather, there are spiritual moments, but they do not arise from planned activities. They are apt to be serendipitous or spontaneous, a mystical or mysterious experience.

If we are to enhance prospects for meaningful Jewish continuity, we need to shape a climate of opinion that is favorable to these prospects, mainly by promoting the attitude that traditional beliefs and practices should be welcomed once more into Jewish life.

Admittedly, no message orientation – as distinguished from a project orientation – will impact in the slightest on the behavior or attitudes of most of the American Jews who are now thoroughly assimilated. As for Jews at risk, positive Judaic messages will not survive a shift of opinion away from Judaic-maintenance.

What is crucial to Jewish prospects is how American Jews view their Jewish present, particularly the role of traditional observance and belief in their lives. Far less important is whether this or that activity is undertaken.

One obvious difficulty with this view, which may seem too deterministic for some of us, is that if there is a climate of opinion which transcends planned activity, what can the organized Jewish community do to shape it in a more Jewish direction? Are we at the mercy of an historical determinism which mocks, as Sisyphean, our most determined efforts?

I believe that the climate of opinion is formed, to an extent, by those attitudes and behaviors which are regarded as proper. A greater stress on religiosity, which derives from a mood that is favorable to religiosity, promotes a climate of opinion that is more conducive to religiosity. There is, in

short, a feedback relationship between attitudes and activities, with the latter deriving purpose and direction from the former, while they also help to shape it.

For this reason alone it is important whether organized American Jewry sponsors activities which can serve as vehicles for translating the new mood favorable to tradition into more positive behaviors in the lives of a growing number of American Jews.

Regarding such activities, these observations may be offered:

1. Because the instinct to embrace a more spiritual life or to return to Judaism is usually serendipitous, just about every Jewish experience or setting has the capacity to trigger the desire to grow Jewishly. Hardly anything should be excluded entirely, except perhaps activities or environments which are purposefully hostile to religion. Even our dysfunctional organizational mass has the capacity to spark Judaic growth by providing multiple entry points into Jewish life.
2. This acknowledged, it remains that a more purposefully Jewish setting or experience has a greater potential for triggering Judaic interest and growth.
3. Jewish activities and projects generally come into play after the initial quest for Judaism has been awakened. In the subsequent, almost always long and decisive maintenance phase, Jewish education, synagogue activities, communal programming are all necessary to give content to and reinforce the initial Judaic stirrings.
4. Even more than in the initial phase, in the maintenance phase the prospect for positive Jewish outcomes is far greater when the setting and activities are purposefully religious. Such activities affect both the lives of participants and also the climate of opinion in the direction of stronger Jewish commitment.

In this analysis, nearly every Jewish experience can be fruitful. Because of the weakened state of American Jewry, with assimilation dominant even among many Jews of commitment who are also Jews at risk, those activities or experiences which seek to transform the lives of participants in the direction of traditional observances and beliefs are far more likely to produce positive outcomes.

If contemporary Jewish affairs could be conducted on a clean slate or words were readily convertible into action or sentiments determined outcomes, there would be good reason for optimism. Never in the experience of American Jewry has there been such widespread talk about promoting religion, tradition, practices, beliefs. Nearly every aspect of our organized life, including shuls and schools and programs and agencies, is being re-examined to determine how best to fulfill the obligation to ensure Jewish continuity.

Unhappily, a century of bad history cannot be erased, nor do words or sentiments guarantee results. We are in large measure trapped by our past, so that a majority of American Jews are orphans in history. It is frustrating, even painful, to listen to messages which should have been delivered decades ago being directed at people who no longer listen.

American Jewry took to assimilation like fish take to water, and even though we now speak a somewhat different language, we aren't by a long shot prepared to be weaned away from that environment, to abandon our abandonment of traditional Judaism.

Everywhere there is dualism and contradiction. There is an abundance of rhetoric which is Jewish and sweet and comforting, but our actions are powerful evidence that the long night of assimilation is not yet at an end. This is apparent in our organizational world of grants and activities, a world that should be more receptive to change than individuals

are in the pattern of their daily lives. It is telling how little has changed since the 1990 National Jewish Population Survey. It set off alarms, yet surprising as it may seem, funding for religiously purposeful activities, specifically including meaningful Jewish education, has scarcely improved.

Admittedly, it may be unrealistic to expect quick results. The process of Judaic discovery is unlike the process of Jewish loss. The latter could be rapid and a mass experience, as it usually was over the past two hundred years. The return to Judaism is a retail business, just one life at a time.

This is where religious Jewish education comes into the picture. It is unlikely that the improved climate of opinion and the more religiously purposeful programming that may go along with it can appreciably affect the life-style of Jewish adults, including those who are at risk. Their pattern of Judaism is essentially set and while some will upgrade their Judaic commitment – *teshuva* is always an option for Jews – not many will.

Adults, however, make choices about their children's education, choices which dramatically impact on the prospect for Judaic maintenance. If we are to capitalize on the new climate of opinion we must direct our attention to Jewish education.

The aim of Jewish education must be religious socialization, which is a return to its historic role. Our educators and experts err when they focus on the innards of Jewish education – on teacher training and recruitment, curriculum development, educational administration and the like. As important as some of these things are, they cannot hold a candle to the restoration of the primacy of religion in Jewish education.

As for day schools, they are more likely to result in positive

outcomes than supplementary schools because in the aggregate they are more purposefully religious. Receptivity to religious practices and beliefs is intrinsic to their mission. Aggregate outcomes, however, tell us little about particular situations or outcomes. In fact, it isn't always the case that day schools do a good job or that they are preferable to supplementary schools. Too many Jewish day schools are minimalist or handicapped in ways which limit their accomplishments.

The oldest Reform day school in the country was established more than twenty years ago. It runs through the sixth grade, which prompts the question whether any of the students continue on in another Jewish school. Apparently, none do, which is strong and also sad testimony to the ineffectiveness of this institution.

The term day school has become a slogan, much like continuity, without sufficient heed being paid to the educational and religious dynamics which determine their Jewish effectiveness. They are in the aggregate clearly superior to any other Jewish educational mode, which at times isn't saying very much. It might be noted that NJPS data showed a surprisingly high intermarriage rate among baby boomers who attended day school – about 20% – and this figure includes those who attended Chassidic and yeshiva-world schools, for whom the intermarriage rate obviously was much lower.

Much of what is infirm about day schools arises from their pyramidal enrollment pattern, so that enrollment is by far greatest at the pre-school base and declines steadily as grade level rises. By the eighth grade, enrollment is a pale shadow of what had been or now is in the first grade.

At the high school level, the story is nearly pathetic, with the total enrollment in the country in non-Orthodox institutions amounting to fewer than 2,000. The picture is improving, but very slowly, so that in the years when Jewish

teenagers at risk are most in need of Judaic reinforcement, they are least likely to get it. At times the outlook is only marginally better for attendees at certain non-Orthodox high schools which are afflicted by an overdose of religious minimalism.

Emphasis is being placed on the establishment of Jewish high schools, which is a happy development, provided that their Jewish mission doesn't end with their high-sounding mission statement.

It is too smug to speak of day schools as if they have magical transformative powers which can undo the damage of assimilation. As a rule, non-Orthodox day schools are weak, as are too many Orthodox day schools, because they confront social and educational imperatives which hamper their religious mission and reduce their effectiveness, at times severely.

Day schools are not exempt from the requirement that to be effective, every Jewish activity must be purposefully religious. There is a danger that marginal or weaker day schools will emerge as the Talmud Torahs of the 21st century, institutions with the right name and trappings and yet which also are the handmaiden to Judaic abandonment.

The alternative is to imbue Jewish education with Judaism and to reinforce this sense of mission by integrating Jewish education and outreach, so that the former embraces the goals and some of the techniques of the latter by seeking to promote religious commitment.

Education and outreach have generally been regarded as distinct activities and for good reason. Education is essentially a classroom experience occurring in institutions which exist exclusively for this purpose. Outreach is largely informal, even ad hoc; it takes place outside of schools (although school facilities may be used) and it primarily involves adults.

Education is directed at children of school age and it is structured in terms of curriculum, assignments, tests, grades, etc. Outreach needs to be fluid, reflecting the entirely voluntary nature of participation.

While they are different, there is more than a modicum of overlap. Outreach can involve school children and, for certain, much of it is educational, at times encompassing formal study and texts. These days, it is difficult to envisage outreach without its core educational components. But formal education is rarely thought of in terms of outreach. Much of this has to do with the closed world of educators who see the experience exclusively in pedagogical terms.

Because the stakes in Jewish education are now so high, it is risky to allow the activity to be exclusively the province of educators. Jewish education must be seen and experienced in religious terms, in terms of a socialization function which molds children in the direction of traditional practices and beliefs. Put otherwise, our educators must reach out to incorporate the ideals and methods of outreach into formal education. Jewish education must have a transformational purpose which enhances the ordinary classroom routine.

This is not an entirely new idea, for many yeshiva and day school faculty members and even some teachers at the now discredited Talmud Torahs have regarded their role to include mentoring and outreach responsibilities.

The outreach function in Jewish education must become more universal and legitimate and it must be incorporated into the ordinary program because much of what erodes the capacity of Jewish education to perform its religious function occurs outside of schools and classrooms. Unless Jewish schools – meaning its lay officials and professional staff – are willing partners in the articulation of an outreach responsibility, they will scarcely be able to counteract the external forces impelling their students away from Judaism.

Under the best of circumstances, formal Jewish education, including day schools, cannot do the job alone. This is obviously true for the large majority of Jewish children for whom day schools are not a serious option and probably even not for those who are transferred out at an early age. It may be true, as well, for a considerable proportion of regular day school attendees.

These children and their families – all are Jews at risk because they actively participate in Jewish life, even as they yield to modernity and assimilation – can best be reached and influenced through outreach messages and activities. Israel experiences, camping, youth groups and other Jewish activities can be modestly effective, provided that they are regarded as supplements to the core educational experiences and not superior to them and provided, as well, that they are not compromised by minimalism.

Just as Jewish education continues to be hampered by minimalist aspirations, outreach is enervated and compromised by goals which even if they are achieved will contribute little to meaningful Jewish continuity. As in Jewish education, there is in outreach formulistic incantation of slogans such as continuity and identity which are devoid of any content. Too much of what is called outreach is empty posturing that deliberately avoids the transformational potential and obligation that has characterized all of outreach until the recent period.

Because the initial decision to aspire to religious growth is usually spontaneous and unpredictable and not the result of planned activities, all Jewish experiences may contain the seeds for Judaic growth. Outreach can therefore cover the entire landscape of American Jewish communal activity, certainly including supplementary Jewish education which for good reason has been regarded as a failure. As in all other Jewish experiences, the key is the determination to be

religiously purposeful, to seek a measure of religious transformation and growth.

The choice is between the smug warehousing of Jewish children for a handful of hours in places of Jewish education and the willingness to reject minimalism in favor of religious purposefulness. There is a window of opportunity in American Jewish life. In view of what transpired on these shores for more than a century as Jewish loss was tolerated and explained away, it is probably closed for fully half of the American Jewish population. Just the same, it is open to an extent and in ways that would have been regarded as fanciful a decade ago.

For Jews at risk, this window of opportunity must be exploited by an organized American Jewry which understands that Jewish continuity without Judaism is an historical falsehood and ultimately a sociological impossibility. Because these Jews are at risk and are confronted by assimilatory influences, the partially opened window of opportunity is unlikely to remain open for very long.

Through meaningful religious Jewish education which proudly seeks to teach our heritage, including practices and beliefs, and to encourage religious growth, this window of opportunity can be for some Jews the entranceway to a more fulfilling, more Jewish, American Jewish experience in the century that will soon begin.

Cooking Milk and Meat in One Oven

Rabbi Howard Jachter

Introduction

An issue faced in a Jewish home is establishing a protocol for cooking milk and meat in one oven. There exist many opinions among rabbinic authorities regarding this issue, ranging from quite lenient to quite strict. This essay will explore the positions of the *Gemara* and the *Rishonim* regarding this question and will outline four different protocols for use of an oven for milk and meat from four major halachic authorities. We will begin by reviewing the talmudic discussion of the halachic status of *reicha* – aroma emitted by foods.

I. *Reicha* - Aroma Emitted From Food

The Talmud (*Pesachim* 76b) records a debate between Rav and Levi whether *reicha milta* or *reicha lav milta* – is the aroma emitted from food halachically significant or not. The case discussed in the Talmud is kosher meat cooked in the same oven with, but without touching, non-kosher meat. According to Rav the aroma emitted by the non-kosher meat renders the kosher meat not kosher, because *reicha* is halachically significant. Levi, however, rules that the meat

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remains kosher because *reicha* is not halachically significant. These rulings apply also to milk cooked simultaneously with meat in the same oven.

Rishonim disagree regarding which opinion is accepted as the halachic norm. Rashi (*s.v. amar lecha*) asserts that the halacha follows the opinion of Levi. Tosafot (*s.v. osra*) cite the opinion of Rabbeinu Tam who rules in accordance with Rav. Rif (*Chullin* 32a) and Rambam (*Hilchot Maachalot Assurot* 15:33) also rule that Levi's is the halachically-accepted opinion. However, they assert that even Levi does not permit one to deliberately (*lechatchila*) cook kosher meat in the same oven as non-kosher meat. Levi only permits post facto (*b'dieved*) the kosher meat that has been cooked in the same oven with non-kosher meat.¹

The *Shulchan Aruch* (*Yoreh Deah* 108:1) rules in accordance with Levi that *reicha* is not halachically significant. However, it adopts the limitations of the Rif and Rambam that one may not deliberately cook kosher and non-kosher meat simultaneously in one oven.

The Ramo then adds a series of stringent rulings on this issue which incline the halacha towards Rav, while essentially ruling like Levi that *reicha* is not halachically significant. First, the Ramo notes the custom to avoid cooking kosher/non-kosher or milk/meat together in one oven even if the oven is large.²

1. See, however, the Ran (*Chullin* 32a in the pages of the Rif) *s.v. veva detani*.

2. This custom is quite strict in light of the fact that Tosafot (*Pesachim* 76b *s.v. osra rava*), who rule in accordance with Rav, assert that Rav would agree that aroma emitted from one food does not affect another food if the oven is large enough to allow any *reicha* to dissipate.

The Ramo subsequently presents a variety of situations where there are opinions that even Levi would agree that *reicha* is halachically significant. These include 1) *Chametz*, where *chametz* is cooked simultaneously with food intended for Passover use. 2) If either food is quite sharp, such as onions or hot peppers (*davar charif*).³ 3) If the oven is not ventilated.⁴ 4) Something *pareve* cooked with either milk or meat in one oven, should not be eaten (*lechatchila*) with the opposite type of food (for example, a kugel cooked simultaneously with chicken in the same oven, should initially not be deliberately eaten together with milk. See *Aruch Hashulchan* 108:14-15 who explains that *b'dieved* it would be permitted if one has difficulty finding something else to eat). The *Shach* (no.9) adds that if one places food in the oven with the intention that its aroma be transmitted to the other foods, then all agree that in this case the *reicha* is halachically significant.

The overall theme of this chapter in the *Shulchan Aruch* is best expressed by the heading printed in the text of the *Shulchan Aruch*: "One should not cook kosher and non-kosher in one oven." The Ramo notes that all these rules apply equally to milk and meat. Therefore, it is not surprising that the *Aruch Hashulchan* (*Yoreh Deah* 108:9) rules that

3. See *Gilyon Mahersha* (thereupon, s.v. *v'kol shekein*). For a description of what is considered a *davar charif*, see Ramo 95:2 (at the end) and *Aruch Hashulchan* 96:13-14.

4. Rabbi Binyomin Forst writes (*The Laws of Kashrus*, p.143) that this does not apply to conventional ovens, since they are ventilated. However, he asserts that microwave ovens might not be sufficiently ventilated to say that their *reicha* is not halachically significant. There is no halachic standard to objectively define the required amount of ventilation. A determination must be made by a halachic expert.

one may not initially cook even lean kosher meat with lean non-kosher meat.⁵ Similarly *Pri Megadim* (*Siftei Daat* 108:18(1)) rules that it is best to avoid cooking kosher and non-kosher bread simultaneously in one oven. Moreover, because of the concern of spills, one should not cook meat and milk simultaneously one above the other, even if both foods are covered (Ramo 92:8 and 97:1). Only if the covered foods are placed side by side are they permitted to be cooked simultaneously (*Pri Megadim, Siftei Daat* 108:10). If, *b'dieved*, one cooked milk and meat simultaneously in an oven, a competent halachic authority should be consulted.⁶ It should be noted that the *Shulchan Aruch* speaks mostly of cooking⁷ milk and meat simultaneously and not consecutively. Ramo (108:1), however, applies these rules to cooking milk and meat consecutively beneath a flat pan (i.e. a confined area) if both the milk and meat emitted steam (*zeiah*).⁸

II. *Zeiah* – Steam Which Emerges From Food

The Ramo's introduction of the problem of cooking milk

5. The Talmud considered the fat in the meat to be the source of the aroma emitted. See *Taz* 108:1 and *Shach* 108:1, who disagree with the *Aruch Hashulchan*.

6. Certain judgments may have to be made which require a decision from a halachic authority. An example is if a significant financial loss is involved (*hefsed meruba*).

7. It should be noted that even though the Talmud mentions roasting meat as generating *reicha*, Ramo (108:2) writes that one should be strict regarding cooking meat and milk simultaneously unless either the oven is open slightly (to permit the aroma to leave the oven), or in a *b'dieved* situation, in case of significant economic loss.

8. See *Aruch Hashulchan* 108:17.

and meat consecutively in the same oven brings us to the issue of *zeiah* – steam emitted from food. The *Shulchan Aruch* (92:8) cites the *Teshuvot HaRosh* (20:26) that "if one placed a pan of milk beneath a pot of meat, the steam emerges [from the milk] and is absorbed into the pot [of meat] and renders it forbidden" (because of the mixture of milk and meat). The Rosh cites the source for *zeiah* being halachically significant, as being the Mishnah in *Masechet Machshirim* (2:2) which states that the steam which arises from a bathhouse which is ritually unclean (*tamei*) is also ritually unclean.⁹ We see from this Mishnah that the steam that rises from something retains the status of the item from which it emerged. Thus steam that rises from milk is considered by halacha to be milk.

An important question needs to be raised at this point. The problem is that when the Talmud discusses kosher meat being cooked simultaneously with non-kosher meat, there is no mention of concern for *zeiah*.¹⁰ Moreover, we seem to be more strict with *zeiah*, which the *Shulchan Aruch* rules can render food unkosher, than with *reicha*, which we say is kosher *b'dieved*. We will cite six approaches to answer this problem. These answers are not of mere academic concern. They serve as the basis for the variety of protocols

9. The Vilna Gaon (*Biur HaGra* 92:39) cites a different source. He cites *Chullin* 108b which states that covering a pot is equivalent to stirring a pot. The Vilna Gaon explains that the *hevel* – thick steam – of the pot transfers the taste of the food throughout the pot. According to this source, it would appear that this rule is limited to a thick steam (*hevel*) and not just any steam arising from food.

10. See *Yabia Omer* 5: *Yoreh Deah* 7; *Minchat Yitzchak* 5:20; and Rabbi Noach Oellbaum, *Mesora* 4:23-34, for discussion whether *zeiah* is of biblical or rabbinic origin.

suggested by the great halachic authorities regarding cooking milk and meat consecutively in the same oven.

1. *Mishkenot Yaakov*

Because of these questions the *Mishkenot Yaakov* (*Yoreh Deah* 34) rejects the assertion of the *Rosh* and *Shulchan Aruch* that *zeiah* is halachically significant.¹¹ He believes that one may cook milk and meat consecutively if the oven is clean. This *Mishkenot Yaakov* appears, however, to be the lone authority to take this approach. Virtually all other authorities accept that *zeiah* is halachically significant.

2. *Aruch Hashulchan*

The *Aruch Hashulchan* (92:55) writes that *zeiah* is a relevant concern only in a small enclosed area and not an open area. He continues that the aforementioned case in the *Shulchan Aruch* provides an example of an enclosed area: "such as a very small oven in which a pot is placed and upon it is placed a second pot – the *zeiah* rises and fills the area, because it does not have a place to escape." The scope of *reicha*, however, is not limited to such a situation. The Talmud when it addresses the issue of *reicha* does not mention the issue of *zeiah* because it is not speaking about a situation of cooking both foods in a small enclosed area. The *Aruch Hashulchan* concludes, "but when [cooking in an] open area which has air such as in our ovens [meaning

11. He points out that Rashi on *Chullin* 108b (s.v. *ne'eir*) states that the concern when one covers a pot (see note nine) is that the water on the bottom of the pot will now spread throughout the pot. The *Mishkenot Yaakov* writes that Rashi seems to be concerned exclusively with the spread of the water, but not of the steam emerging from the food.

that the food is not placed in a tightly enclosed oven as in the time of the Talmud] the *zeiah* rises in the air and does not render unkosher the pot that is close to it."

Rabbi Feivel Cohen (*Badei Hashulchan* 92:180), on the other hand, points out that Ramo 92:8 seems to contradict this assertion of the *Aruch Hashulchan*. The Ramo writes of the possibility of *zeiah* when meat is hung above pots of cooking milk. Accordingly, the Ramo is concerned with *zeiah* even if the cooking area is not confined and closed.¹²

3. *Pri Megadim*

The *Pitchei Teshuva* (92:6) cites a suggestion made by the *Pri Megadim* (in his *Hanhagot Horaat Issur V'Heter* 2:37), that perhaps the rule of *zeiah* applies only to steam which emerges from liquids but not from solid food. This would explain why the Talmud when discussing *reicha* does not

12. Rabbi Akiva Eiger (92:8 s.v. *shehayad soledet*) seems to adopt a middle approach concerning this question. He writes that if there is a question if the *zeiah* is *yad soledet bo* (hot to the touch, the halachic definition of when something is hot and can be absorbed into a vessel; see Rabbi Forst, *The Laws of Kashrus*, pp. 403-404) then one may rule leniently if the foods are not enclosed in a small confined area. This is apparently because *safek d'rabbanan likula*, that one may rule leniently in case of doubt when dealing with a question rooted in a law of rabbinic origin. If, however, the foods were cooking in a small confined area, then even in a case of doubt if the *zeiah* was *yad soledet bo* one must rule strictly in a case where there is a question of infraction of a biblical law (*sfeika d'orayta l'chumrah*). Apparently, Rabbi Akiva Eiger believes that the question of *zeiah* is of biblical origin (see note ten) when foods are cooking in an enclosed area, and of rabbinic origin when the foods are cooking in a more spacious cooking area.

mention the concern of *zeiah* – because it speaks of roasting meat, whose *zeiah* according to this approach is not halachically significant. The *Acharonim* debate whether this suggestion of the *Pri Megadim* is correct.¹³

4. *Rabbi Moshe Feinstein*

Rabbi Moshe Feinstein (*Iggerot Moshe Yoreh Deah* 40) suggests a variation of *Pri Megadim*'s approach. He suggests a consideration of leniency even if the *zeiah* emerging from solid foods is considered halachically significant. He infers from the language of *Ramo* (108:1) that one does not have to assume that *zeiah* emerges from solid foods as one must when dealing with liquid foods. Only when we see that solid food emits steam do we have to be concerned with *zeiah*. According to Rabbi Feinstein's approach, one may say that the *Talmud* is speaking of a situation where the meat did not emit steam, and therefore the *Talmud* makes no mention of *zeiah*.

5. *Chavat Daat*

Chavat Daat (*Biurim* 92:26) and other authorities (see *Badei Hashulchan* 92:166) rule that *zeiah*'s halachic impact is limited to saying that it rises from food and is absorbed into a pot above the food. However, halacha does not ascribe to *zeiah* the ability to extract (*maflit*) food absorbed in an oven roof above it and subsequently to serve as a conduit

13. See *Aruch Hashulchan* (92:54), who rejects this distinction. Also see Rabbi Feinstein's nuanced approach to this issue in the responsum cited in the text. For a summary of the opinions regarding this question see *Yabia Omer* 5: *Yoreh Deah* 7:4-5. *Chelkat Yaakov* (2:136) rules strictly on this matter, because empirical evidence indicates that *zeiah* emerges from solid foods.

for this extracted food to enter the food below it. According to this approach, milk and meat pots cooking side by side constitute only a problem of *reicha* and not of *zeiah*, since there is no opportunity for the *zeiah* to enter the other food.

Hence, one can account for the Talmud's omission of the concern for *zeiah* because it is not speaking of kosher food placed above cooking non-kosher food. Nevertheless, many authorities, most notably the *Dagul MiRevava* 92:8 (also see aforementioned *Badei Hashulchan*) disagree with this assertion. They would say that cooking milk and meat consecutively in the same oven constitutes a serious problem, because the *zeiah* from the second cooking extracts the *zeiah* absorbed from the first cooking.

6. *The Rosh*

The *Rosh*, whose responsum is the point of departure for the halachic discussion of *zeiah*, raises the possibility in that responsum that a hot pot prevents the absorption of *zeiah*. Accordingly, a hot oven roof cannot absorb *zeiah*. *Aruch Hashulchan* (92:55) adopts this approach as normative halacha. This easily accounts for the Talmud's omission of the concept of *zeiah*, because *zeiah* is relevant in relatively few circumstances – when the pot above the cooking food is cold or when food not enclosed in a pot is placed above cooking food. However, Rabbi Moshe Feinstein (*Iggerot Moshe Yoreh Deah* 40) is representative of the halachic consensus which rejects this approach. Indeed the *Shulchan Aruch* seems clearly to rule that a hot pot absorbs *zeiah* (he did not limit his ruling, that absorption occurs, to a case where the pot was cold).¹⁴

14. The *Maharsham* (3:208) suggests another point of leniency concerning *zeiah*. He suggests that any "food" (*beliot*) extracted

The common denominator of the six approaches outlined is that they somehow limit the applicability of the concern for *zeiah*. The halachic authorities must do so because they must account for the fact that the talmudic discussion in *Pesachim* 76 mentions only *reicha* but not *zeiah*. Whether an authority has an expansive or restrictive view of the applicability of *zeiah* will have an impact upon how that authority rules concerning consecutive use of milk and meat in one oven. We will outline four halachic protocols of four major authorities regarding this question.

III. Four Halachic Protocols

1. *Aruch Hashulchan*

According to the approach of *Aruch Hashulchan*, one would be permitted to cook milk and meat consecutively in the same oven, provided that the oven is clean. The cleanliness of the oven eliminates the problem of *reicha*, and the fact that we do not cook in small confined areas¹⁵

by *zeiah* from the roof of the oven would be nullified by the food in the pot, which presumably contains sixty times more food than what is extracted. He adds that the rule "*ein mevatlin issur lechatchila*", that one is forbidden to intentionally nullify forbidden food, is not a relevant concern because there are many reasons to rule leniently and limit the applicability of *zeiah*. Therefore, at worst the *zeiah* creates merely a *safeik issur*, something prohibited because of doubt. He cites the *Shach* (92:8), that the prohibition to nullify forbidden foods does not apply to foods forbidden merely because of doubt. See, however, *Darchei Teshuva* 99:37, who cites authorities who disagree with this assertion of the *Shach*.

15. This would appear to apply even to a small microwave

removes the problem of *zeiah*.¹⁶ Rabbi Hershel Schachter routinely tells inquirers that they may adopt this approach. Rabbi Schachter reasons that the problem of *zeiah* applies only to *hevel* – thick steam – an assertion supported by *Biur Hagra* (92:39).

2. Rabbi Aharon Lichtenstein

Although Rabbi Lichtenstein permits one to eat in a home where the opinion of the *Aruch Hashulchan* is followed, he recommends that one adopt a stricter standard. He suggests that either 1) one wait twenty-four hours between cooking milk and meat in the same oven¹⁷ (it is reported that Rabbi

oven. *Aruch Hashulchan* limits the applicability of *zeiah* to a situation in which the two foods are cooked simultaneously in a small confined area.

16. This approach reflects the accepted practice of Eastern European Jewry as recorded in the aforementioned *Teshuvot Maharsham* and in Rabbi Shlomo Kluger's *Teshuvot Tuv Taam Vedaat* 3:1:176. It is hardly surprising that the *Aruch Hashulchan's* ruling is in harmony with the practice of Eastern European Jewry of his time. A recurring theme of the *Aruch Hashulchan* is his recording, and most often defending, the halachic practices of Eastern European Jewry.

17. This reduces the question from a biblical issue to a rabbinic issue. Halacha considers food absorbed in a utensil to become inedible after twenty-four hours (*notein taam lifgam*) and hence permitted. It is forbidden to cook milk in a meat pot that has not been used for more than twenty-four hours only on a rabbinic level (the Rabbis forbade it lest one confuse a utensil used within twenty-four hours and one that was not; see *Avoda Zara* 76a). Since an oven for meat (for example) not used in twenty-four hours does not pose a problem on a biblical level, and there are so many limitations on the applicability of *zeiah*, therefore Rabbi Lichtenstein (and Rabbi Feinstein) believe that in this situation

Moshe Feinstein permitted this as well¹⁸⁾ or 2) *kasher* the oven between cooking milk and meat in the same oven within twenty-four hours. One *kashers* the oven for this purpose by cleaning it and letting it run for an hour at its maximum temperature.¹⁹⁾ The laws regarding a microwave,

one may rule leniently.

18. Oral communication from Rabbi Efraim Greenblatt, a leading disciple of Rabbi Feinstein who is the author of the voluminous *Riveivot Ephraim*. Rabbi Greenblatt reports that he heard this ruling in the name of Rabbi Feinstein.

19. Rabbi Lichtenstein follows the ruling of his father-in-law Rabbi Joseph B. Soloveitchik that an oven may be *kashered* by running it at its highest temperature for at least an hour. Rabbi Lichtenstein's ruling is cited by his student Rabbi Shmuel David (*Alon Shvut* 130:9-23).

Rabbi Feinstein does not offer this suggestion because he believes that this is not sufficient to *kasher* an oven. He requires that the oven be heated to at least 700 F in order to be *kashered*. (See *Iggerot Moshe* 1:59 and Rabbi Shimon Eider's *Halachos of Pesach*, pp.179-181). Rabbi Feivel Cohen (*Badei Hashulchan* 92:80 *Biurim s.v. lechatchila*) objects to this approach because most of our conventional ovens are coated with porcelain which is considered by most authorities to be earthenware which cannot be *kashered*.

Chelkat Yaakov 2:136 objects to *kashering* an oven from meat to milk (except on an occasional basis), based on the Ashkenazic custom (see *Magen Avraham* 509:11) not to *kasher* from milk to meat and vice versa. One could reply that since the basis for this custom is the concern for confusion, that one may forget to *kasher* the utensil and use the wrong utensil in preparing food, this is not such a pressing issue when concerning ovens where there exist many lenient considerations as we have discussed. It is very reasonable to state that regarding a situation like *kashering* an oven between milk and meat, the custom was never intended to apply. Even if one forgets to *kasher*, one still has the opinions of the *Aruch Hashulchan* and others to rely upon. The source for

however, may be different.²⁰

3. Rabbi Moshe Feinstein

Rabbi Feinstein indicates (*Iggerot Moshe Yoreh Deah* 40) that one may cook milk and meat consecutively in one oven if either the milk or meat pots are covered. This is based on the *Ramo* (92:8) that states *zeiah* does not constitute a problem if a pot is covered.²¹ In addition, Rabbi Feinstein (as mentioned previously) rules that one has to be concerned that solid food emits *zeiah* only if one is aware that it has done so. Rabbi Feinstein does not mention the option of waiting twenty-four hours between cooking milk and meat; this is an oral report that is quoted in his name.

4. Rabbi Feivel Cohen

Rabbi Cohen (aforementioned citation in the *Badei Hashulchan*) as well as the *Chelkat Yaakov* (2:136) and *Minchat Yitzchak* (5:20) strongly urge that one acquire two

saying that we are not concerned lest someone forget, in a situation where the food will be kosher *b'dieved* even if he did forget, is the *Rosh*, *Chullin* 1:5, and *Taz*, *Yoreh Deah* 2:4.

20. For a discussion of *kashering* a microwave oven, see Rabbi Shimon Eider, *Halachos of Pesach*, p.182, and Professor Zev Lev (*Techumin* 8:21-36). It should be noted that this problem can easily be solved in a microwave oven by covering both the milk and meat foods.

21. Those who rule strictly and require one to use two separate ovens for milk and meat point out that the *Ramo* concludes that one should be strict *lechatchila*. Rabbi Feinstein responds (*Iggerot Moshe Yoreh Deah* 3:10) that this point refers only to cooking covered milk and meat foods, one above the other, simultaneously. If cooked consecutively, argues Rabbi Feinstein, the concern for spills is irrelevant and is thus permitted *lechatchila*.

separate ovens for milk and meat. They believe that the use of milk and meat in one oven is so fraught with halachic problems that a great effort should be expended to avoid these problems. In addition, Rabbi Cohen rules that one should have separate grates for milk and meat for both the oven and stove top. Rabbi Moshe Feinstein (aforementioned responsum), on the other hand, wholeheartedly endorses the generally accepted practice to use one set of grates both for milk and meat.²² Rabbi Feinstein notes that on Passover, the common practice is to be strict and to change grates from *chametz* use to Pesach use. This reflects an extra stringency which is consistent with the very strict nature of the halachot of Pesach.

IV. Conclusion

We have seen that there are many differing approaches to the question of cooking milk and meat consecutively in one oven. These opinions reflect the many different approaches to the scope of the applicability of the concern

22. Rabbi Feinstein relies on the fact that pots, and not food, are placed on the grates, and the halacha states that two utensils do not absorb from one another (Ramo 92:8). Rabbi Cohen objects to this because an exception to this rule is when there is liquid present between the utensils which can serve as a medium to transfer taste (*beliot*) absorbed in the utensils. His concern is for spills which cause liquid to sometimes be present between the pot and the grate. However, Rabbi Cohen defends Rabbi Feinstein's position by citing the ruling of *Chavat Daat* (*Biurim* 92:20) that a small amount of liquid cannot cause a transfer of taste from one utensil to another. The amount of liquid that would lodge between a pot and the oven or stove grate is presumably considered by Rabbi Feinstein to be only a small amount which is incapable of transmitting taste.

for *zeiah*. One should seek guidance from a halachic advisor as to which of these protocols to adopt in practice.

Whose Body? Living With Pain

Rabbi Alfred Cohen

One of the most difficult and painful experiences any person has to go through is seeing a loved one suffering greatly. The feeling of helplessness, of suffering for the sick one, of despair, often lead one to ask – is this really necessary? Must a sick person suffer so much? Is it necessary to try every procedure, no matter how fleeting its benefit and how difficult its implementation, just to buy for the dying person another day, another week – of what? Of pain, of suffering?

Thus, in our age – which has seen marvels of medicine and surgery, developed machines which can breathe for a person, pump his blood, cleanse his arteries, and keep the body alive long after one would have hoped for release – more and more often, the question is asked: is this necessary? Is a person committed to Torah and halacha obligated to do everything possible in order to prolong life? Whether it be one's own life, or the life of another for whom one is responsible, does Jewish law always require that "*uvacharto bachaim*", you must choose life?

Choosing To End Life

The Gemara¹ relates the existence of a very unusual town.

1. *Sota* 46b.

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Rebbi, Yeshiva University High School*

In this town, Luz, no one ever died.

However, the old people there, when their lives became intolerable, would go out beyond the city walls, and [there] they would die.

What is the Gemara's point in telling us about this practice? Should we interpret it as indicating that when a person "has had enough", he can take steps to bring an end to life?

Certainly that does not seem to be the thrust of Jewish law. Halacha mandates violation of the Sabbath in order to save a life, even if it is only to free someone trapped under the debris of a fallen building, someone so gravely injured that at best he can live only a very short time thereafter.² This shows how highly halacha regards even a few moments of life, even when there is no chance of saving that life for any appreciable time. Jewish law forbids even *moving* a person who is dying (*gosses*), for fear that thereby one may hasten death.³

These few points suffice to indicate why there is so much confusion about what Judaism requires or forbids us to do – the sources are in a sense ambiguous, open to a number of interpretations. While Jewish law is emphatic on the absolute prohibition against euthanasia, and halacha is clear that virtually all other considerations are set aside to save a life, nevertheless, there is some lack of clarity on a number of key questions: If the sick old people of Luz were free to choose when to leave town to die, does that imply that we have control over our deaths? If we may not intervene for a person in the throes of death, does that mean we have no control?⁴

2. *Yoma* 82.

3. *Shulchan Aruch, Yoreh Deah* 339:1.

4. The *Ran* (*Nedarim* 40b) writes that it is permitted to pray

And if we should desecrate Shabbat for a person who clearly cannot live much longer, doesn't that indicate that every moment of every life is infinitely precious?

The present study will explore this issue from a variety of perspectives, within the context of Jewish law. There is no question here of "assisted suicide", that euphemism for murder or suicide, which is always forbidden. Furthermore, let us understand that we are not dealing with questions to which one can find definitive answers of "yes", "no", "never", or "always". Perhaps, however, a clearer insight will lead to an understanding that some situations require learned religious guidance, not only learned medical advice.

Who Decides?

Our purpose is to investigate a very troubling issue, which is increasingly becoming an inescapable dilemma of many people's lives. There is much confusion about what the Torah requires or allows when it comes to taking or choosing not take measures which might extend life, due to the attendant pain.

To what extent, under Jewish law, does a patient have control, or at least a say, over the treatment he chooses or refuses to take? Who has the ultimate decision-making power?

for someone to die, in order to end his suffering. On the other hand, prayer is not really *doing* anything; it is not an action, but rather begging G-d to take action. Rav Shlomo Zalman Auerbach writes (*Minchat Shlomo* 91) that even if the patient is so sick that one is permitted to pray for his death, nevertheless, everything possible must be done to keep him alive, including *chillul Shabbat* if necessary. See *Nishmat Avrohom, Orach Chaim* p. 134, for the question of traveling on Shabbat to a *tzaddik*, to have him pray for the sick person.

The late Rav Yisrael Gustman related to numerous people, including this writer, that Rav Chaim Ozer Grodzinski, his *rebbe*, had maintained that the patient's wishes must be taken into account before rendering a *p'sak*. However, he hastened to add, all the other *rabbonim* in Vilna did not agree. "But, then," he mused, "who could compare to Reb Chaim Ozer?"

To return to the fundamental issue: whose body is it, anyway? Does the rabbi make the ultimate decision, or the doctor, or the patient (or his surrogate)?

The question itself is something of a "hot potato", as it seems to fly in the face of all the hard-won acknowledgements which women and the elderly and the handicapped have fought for in the past generation. In the western world nowadays, the accepted wisdom generally is that a woman has the right to final decisions over her own body. Abortion, sterilization, pregnancy – these are *her* prerogatives, because it is *her* body. But this is not the approach of Jewish thinking, not for women and not for men.

The power of life over a person's body does not belong to him...not only is a person forbidden to destroy his own life...but even his life is not in any way his.⁵

Rav Zevin cites the *Ba'al HaTanya*, who wrote:

...Because a person has no control whatsoever over

5. Rav Zevin, *L'or HaHalacha*, 318. Interestingly, Rav Zevin raises the question in the context of discussing whether Shylock's contract to exact a pound of flesh would have been upheld in a Jewish court. He concludes that it could not, for the reason stated. He furthermore expresses amazement at the view expressed by *Minchat Chinuch*, *mitzva* 45, who maintains that a person is permitted to give someone else permission to inflict physical damage upon him.

his body, to strike it.⁶

He also brings the Radbaz:

...Inasmuch as a person's soul [life] is not his possession but rather the possession of the Holy One, Blessed be He, as it is written, "And the souls are Mine."⁷

These citations are expressions of the fundamental conviction that bodies and souls are entrusted to people for safekeeping, to be returned to their Owner when He sees fit.⁸ Individuals have limited use of these "items" entrusted to their care, and must carefully adhere to the conditions for their use, as outlined by their Maker in the Torah.⁹

6. *Shulchan Aruch Harav, Hilchot Nezikei Haguf*, 4. See also *Iggerot Moshe, Yoreh Deah* III,140, where Rav Feinstein rules that a person may not donate or sell his body for experimentation after his death.

7. *Sanhedrin* 18:6.

8. *Sefer Chassidim* 675 writes that when a person does not take proper care of himself it is tantamount to committing suicide.

9. On the other hand, Rabbi Shaul Yisraeli of Kfar HaRoeh thinks that the individual does have certain rights over his own body (Rav Shaul Yisraeli, "Takrit Kibya Leor Hahalacha," *HaTorah Vehamedina*, No. 46, pp.71-112). The basic issue he is discussing is the morality of killing innocent non-combatants in wartime. He bases this ruling on a phrase in Rambam, who permits killing a housebreaker, "inasmuch as he [the intruder] is the aggressor, he has already opened himself up to death [*hifkir atzmo lemita*]" (Rambam, *Hilchot Melachim* 9:4). In *Hilchot Rotzeach* 7:8, Rambam employs the same terminology when describing the status of an accidental murderer who was sentenced to be exiled to an *Ir Miklat* but decided to leave that place. Rav Yisraeli argues that if it is not the person's body, how could it be that the thief has already given his life away? How can one

Halacha recognizes specific instances when it is up to the person to make decisions regarding his body and health.¹⁰ For example, if a person feels sick on Yom Kippur and insists that without food he will die, "even if 100 doctors"¹¹ say that

give away that which doesn't belong to him? Perforce, he reasons, there must be some measure of "ownership" which an individual does have, although that does not imply that he can destroy it. He draws an analogy to the owner of a tree. Although the tree is his, and he may eat the fruit, he most certainly is not allowed to destroy the tree, as the Torah says (*Devarim* 20:19).

Still, Rav Yisraeli maintains there is limited control which persons rightfully exercise over their lives. As an example, he notes the conventions of war which most nations of the world have agreed upon. It is recognized by the nations of the world that people killed in wartime are to be considered victims of war, not of murder. These "rules and regulations" of warfare are legitimate boundaries agreed upon by people, delimiting situations where loss of life, while regrettable, is lawful. Rambam rules that nations may enter into such agreements, and Jewish law recognizes their legitimacy, based on the principle "*Dina demalchuta dina*." Thus, he argues, we see that people have the right to "give their lives away" in some circumstances. Even according to Rav Yisraeli, however, the parameters of this liberty are determined by the Torah.

10. Medical procedures in non-life-threatening situations will be discussed hereinafter. Despite the opinion of Ramban in his commentary to Torah, beginning of *parshat Bechukotai*, that the proper action to take when a person is sick is to pray for him, it does not seem to be relevant to normative halacha. See *Tzitz Eliezer XI*, 41.

11. The doctors need not be Jewish; a professional expert is always considered trustworthy, since no expert would endanger his professional status. We therefore need not be concerned about possible prejudices he might harbor. See *Nishmat Avrohom*, p. 185; he also discusses the status of a non-observant Jewish doctor.

he will not die without food," we tell him to eat.¹² This ruling is based on the Gemara's supposition that "*lev yodea morat nafsho*," no one knows better than the individual involved how much pain he is suffering; ultimately, therefore, it has to be his call. He knows best whether he can withstand the pain of not eating.

Conversely, when a person perceives that fasting will cause his death but refuses nevertheless to eat, many consider that he is liable for causing his own death. The Radbaz castigates him as a "*Chassid shoteh*," a pious fool.¹³

Nevertheless, Tosafot grant the patient the option not to eat rather than transgress the holiness of Yom Kippur.¹⁴ According to them, he is entitled to refuse to engage in behavior which is permissible in order to save his life, if he prefers to observe the Torah stricture.¹⁵ As an example, although the rule is that all Torah prohibitions are waived (with the exception of idolatry, murder, and sexual immorality) in order to save a life, according to Tosafot, a person is allowed to say, "I don't care if you kill me, but I won't eat non-kosher food."¹⁶

12. *Yoma* 82. Before giving him food, we remind him of the severity of eating on Yom Kippur. Conversely, if a person is very sick and doctors say he must eat, but he refuses, we have to remind him that the Torah has said "However, I will demand [recompense] for your lives," i.e., we warn him that G-d will not forgive his causing his own death by refusing to listen to medical advice. *Mishnah Berurah*, 608:4. See also *Nishmat Avraham*, *Orach Chaim*, p.184, concerning a healthy person who claims he must eat.

13. Volume IV, 67.

14. *Avoda Zara* 27a.

15. Tosafot's view is not the *halacha lema'ase*.

16. A modern instance of this attitude is recorded by Rabbi

To sum up the position of Jewish law: except for extraordinary situations, a person generally does not have the option to refuse to go on living. Life is a gift from the All-mighty, and only He can decide when to end it. Our concern now will be to investigate the parameters of this general statement and to see if there are circumstances which mitigate it.

Rav Moshe Feinstein has ruled that one may not simply abandon a patient who might recover; even an old person must be given full medical treatment. We are not allowed to say – he's old, what's the point? Even a patient who himself says, "I don't want to go on living, I'm old and tired" – we do not listen to him but try to cure him.¹⁷

There are some situations wherein a person may want to hasten his own death. Take the case, for example, of a gravely ill person who is in great pain; the doctors propose an operation or medication which can prolong his life but which cannot alleviate the pain. Must the patient agree to this? Not according to Rav Moshe Feinstein, who writes,

However, in a situation where the person suffers pains for which there is no known cure [for his sickness] nor a way to reduce his pain – in such a case, a person prefers to die rather than to live a life of such pain....It is not mandatory to give medical treatment to a

Ephraim Oshry who relates that during the Holocaust, the director of a ghetto hospital begged the rabbi to instruct critically ill patients that they need not and should not fast on Yom Kippur. However, many patients simply refused to follow the medical and rabbinical instructions. Even people who in their entire lives had never observed Judaism and had not professed any Jewishness wished to fast together with the other patients and the rest of the Jewish people. Oshry, *Sheilot Uteshuvot Mima'amakim* V:4.

17. *Iggerot Moshe, Choshen Mishpat* 75, n. 3.

person...if he doesn't wish it, with medical treatments that prolong his life with such pain. And even in cases where it is not possible to know the patient's opinion, generally speaking we can assume that the patient would not want nor is there any requirement to give him medical treatment.¹⁸

In this ruling, R. Moshe Feinstein grants the sufferer the right not to prolong his suffering. We shall see that even R. Moshe did not consider it to be either an absolute or an unequivocal right. Nevertheless, it is evident that the Torah only gives a doctor the right to heal or to alleviate suffering. Extending a life of pain is beyond his prerogative. Now he is intruding into the sphere of the *Ribono shel Olam*.

Limits Of Patients' Rights

We have already noted the opinion of R. Moshe Feinstein that in certain cases, a patient may refuse treatment. Rav Feinstein's voice is not the only one raised to champion the patient's right – Rav Shlomo Zalman Auerbach was of a similar mind: In a situation where a woman needed an operation to save her life, but the surgery might leave her a paraplegic for life, he ruled,

Nevertheless, since ultimately the life of paralyzed persons is very bad and bitter, so that they consider

18. Ibid, *Choshen Mishpat* II, No. 72, n.2. In *Yoreh Deah* II, 174 part 3, R. Moshe Feinstein forbids keeping a person alive by a machine if he is in great pain. This could be based on a text in *Ketubot* 36b, where Tosafot express the opinion that had Chananya, Mishael, and Azariah (who were thrown into a burning furnace by the Babylonian king rather than bow to his idol) been threatened with torture, they might have given in. A person is bidden to die rather than transgress the three cardinal sins; but sometimes pain is worse than death.

death preferable to life, in such a case it makes sense that there is no obligation to make the choice of having the operation.¹⁹

But his contemporary, Rav Eliezer Waldenburg, does not equivocate in ruling otherwise:

We must do all that is necessary to save a life, [even] against the wishes of the patient, and every person is commanded [to do] this, arising from [the biblical directive], "Do not stand by your fellow Jew's blood" [i.e., do not passively allow another person to die]. And the matter is not dependent upon the choice of the patient, nor is he given the option to destroy his own life.²⁰

Thus, we find two opposing bodies of thought: Rav Moshe Feinstein and R. Shlomo Zalman Auerbach are among those who allow the patient to choose not to undergo further medical treatment in order to end suffering; intervention which will only prolong pain and the process of dying is not required. But Rav Waldenburg expresses the view of those who maintain that one is not permitted at any time to forego treatment which might prolong life, albeit pain would also be prolonged. According to this position, even if the patient refuses medical treatment, we should force him to have it because it is not his body to destroy; that is the option of G-d alone. As Rav Waldenburg cites the Talmud, "even a moment in this world is beautiful."²¹

Before we proceed in our inquiry, it is important to clarify that the differences of opinion between rabbis and *poskim* are

19. *Minchat Shlomo* No. 91:24..

20. *Tzitz Eliezer* XV:40, no.4.

21. *Sota* 20a. The Gemara considers it a *z'chut* to be alive, no matter how much pain.

not a function of their personal predilections. Rav Auerbach and Rav Feinstein do not rule a certain way because they are "more compassionate" to the sufferer; those who are strict are not "insensitive" to human needs. Let us be very clear – these are questions of Jewish law, not of emotions. The rabbis arrive at their conclusions on the basis of their understanding of Torah law.

There are certain situations where halacha gives the sick person the right to choose. For example, if a person is very sick, the doctors may offer him the following scenario: "Don't do anything, and the disease will kill you in a relatively short time;²² if you do choose to have an operation, it might cure you. On the other hand, it might kill you right away." This is a difficult choice – can the person gamble with the lifespan he is assured of, on the chance of gaining more time?

This situation parallels an incident related in II Kings 7:3-5: Four lepers were outside the walls of the city Shomron, which was being besieged by the Arameans. Due to the siege, there was a dreadful famine, and there was no food within the city. The lepers, who were banned from the city in any case, decided to go to the camp of the Aramean army and beg for bread. Their logic was simple – "We are going to die of hunger within a day or so anyway. Maybe the Arameans will give us some food. Although it is true that the Arameans might also kill us, what do we have to lose? We're going to be dead either way! And there's just a chance that we might not die, if we can get some food."²³

22. "*Chayei sha'a*" – "a short time" – is defined by the halacha as living less than twelve months. See *Darchei Teshuva, Yoreh Deah* 155.

23. R. Moshe Feinstein brings this anecdote as part of the rationale for permitting taking a chance, although he wonders

Rabbinic thinking leans to the view that the patient *should* undergo a procedure if the choice exists. Nevertheless, he may exercise the option not to do anything.²⁴ This is especially pertinent to the situation which sometimes confronts a cancer patient, where the treatment might succeed in curing him – but might also kill him. Experimental drugs or surgery are permitted for a patient who will die without them; this is true also if he is in great pain. If the person is not in a condition to be able to make the choice, R. Shlomo Zalman Auerbach has ruled that the family is relied on to exercise the option which is best for the patient's welfare.²⁵

An essential factor to be considered is the "track record" of the treatment.²⁶ The less sure the doctors are of the possibility of cure, the greater is the patient's prerogative not to have the

why Jewish law follows a precedent set by a group of outcasts. *Iggerot Moshe Yoreh Deah* III:36, n.14. See also *Nishmat Avraham*, Y.D. 155; *Ahiezer* II: 15; *Binyan Zion* I: 111; *Tzitz Eliezer* X:25.

24. *Nishmat Avraham*, *Yoreh Deah* 156, in the name of *Sefer Hachaim* 328. However, *Responsa Lev Avraham* II:30 is not certain about this ruling. Regarding treatment of internal organs, see *Mor U'ketziyah*, *Orach Chaim* 328, and *Tzitz Eliezer*, Vol. 11, p. 105. See also commentary of *Ibn Ezra* to *Shemot* 20:19.

25. *Nishmat Avraham*, *Yoreh Deah* 349;1, reports that Rav Auerbach sent him this opinion in a personal letter. *Shemirat Shabbat Kehilchata*, 328:8, rules that these tests may even be performed on Shabbat.

26. *Ramo* to *Yoreh Deah* 155:3; *Yam Shel Shlomo*, end of "Eilu Tereifot"; *Taz*, *Yoreh Deah* 84; *Iggerot Moshe Choshen Mishpat* 75, n.5. Rav Moshe Feinstein also discusses the halacha if the surgery will leave the patient crippled or deformed.

Rav Feinstein seems to feel that a young person should be pressured into having a procedure which might save his life, but that a mature person should make his own choice.

procedure. Conversely, if the treatment is generally efficacious, the patient has less option to refuse it.²⁷ In those cases where the doctors are not confident of the outcome, he can choose to live whatever amount of time he has left and not take a chance on losing even that short time, or he can take a chance that he will lose everything – but might gain a lot.²⁸

Rav Feinstein returns a number of times in his responsa to the central issue of a patient's right to refuse treatment, and expresses doubt whether a person is required to undergo treatment which will cure his malady but consign him to a life of pain. He tends to the opinion that the decision is really in the hands of the patient, who is entitled to know all the options and make his own decision.²⁹

Rav Auerbach does not give a patient *carte blanche* to bring a quick end to his suffering.³⁰ Even against the patient's express will, he must be provided with food and oxygen; however, we should accede to the request for a cessation of further medical intervention,³¹ even if that cessation will bring

27. This opinion is found in the *Taz, Yoreh Deah* 84:24; *Magen Avraham* 328:1; and *Shulchan Aruch Harav* 328:2. However, *Pri Megadim Aishel Avraham* I:1 writes that even if the treatment is doubtful, the patient should have it. After all, if there is even a chance that a person's life is in danger, we desecrate Shabbat for him. We see, therefore, that in case of doubt we should take action. *Tosafot in Yoma* 83a voice a similar opinion.

28. See *Avoda Zara* 26b.

29. *Iggerot Moshe, Yoreh Deah* II 75, n.1.

30. *Minchat Shlomo*, ibid. We are obligated to explain to the patient that every life has value, even a life of pain. See *Rambam, Pirush Hamishnayot, Pesachim* 4:9. See also *Sefer HaRefuah* 2.

31. Even if the doctor thinks there is a chance that the operation

a quicker death. Rav Feinstein concurs with this ruling:³²

And with a person such as this, who the doctors know cannot recover and live, nor even that he can continue to live but without pain – but it is possible to give him medication to lengthen his life as it is now, with pain – one should not give him medication but rather leave him as he is³³However, if there are medicinal drugs which will relieve his pain but will not shorten his life even a moment, one must give them to him before he begins his death throes [*gosses*³⁴].³⁵

Rav Moshe, too, holds that it is permitted to withhold medical treatment but not food. Every patient must be fed, even intravenously or through a tube if that is necessary. The reasoning is that food is a requirement of nature, for all people

or procedure will help the patient, he must get approval from the patient or from his family, since "it is possible also that they [the doctors] might make it worse." Therefore, they cannot proceed without approval.

32. *Choshen Mishpat*, *Ibid*, n.1.

33. However, he writes, if one gives this patient medication to help him die – he is a murderer.

34. As noted earlier, when death is imminent [*gosses*], Jewish law forbids touching or moving him, for fear that even the slightest intervention might cause immediate death and thus constitute murder. See *Iggerot Moshe*, *Choshen Moshe* II 73:3, which defines the category *gosses* and also what a non-Jew may be permitted to do with him.

35. He also writes that the patient must be given oxygen even though it does not heal, since it prevents the suffering which would occur if he were unable to breathe. Rav Moshe advises removing the oxygen tube after an hour or two, to observe if the patient is still breathing. If he is, re-insert the tube for another few hours and test again. If the patient is not breathing, we know he has died.

and even for animals, in order to sustain life. Food may not be withheld. However, medicine is not part of the "natural process" and must be administered only if it can promote healing or alleviate pain.³⁶

It is necessary to note a significant exception to the above statement: When a person is on his death bed (*sh'chiv mira*), the requirement to feed him no longer applies. That is because our Sages have taught that it is imperative to follow even the slightest wish of a dying person, for fear that the distress of not having his wishes fulfilled at that time may hasten his death. Thus, if the person does not want to eat, we are not allowed to force him, as we would otherwise have to do. For this reason, rules Rav Moshe in this responsum, one should not force-feed a deathly ill patient, lest we make matters worse.³⁷

The basis for the "permissive" opinions of Rav Auerbach and Rav Feinstein is the ruling of Ramo, who permits one to stop making a noise which is holding the patient's attention and thus stopping him from dying.³⁸ Rav Moshe Feinstein reasons that removal of the impediment to dying is permitted in this case only due to the extreme pain which the patient is undergoing. "For if there were no pain, what reason could there be to allow removal of those things which are delaying the exit of the soul [from the body]?"³⁹

Following this rationale to its logical conclusion, we may infer that it is not mandatory to take action to keep alive a

36. *Iggerot Moshe, Choshen Mishpat* II:73, n.3.

37. See *Nefesh Harav*, p. 167, n.4, about sending a telegram on Shabbat to a *tzaddik* to ask him to pray for the sick person.

38. *Shulchan Aruch, Yoreh Deah* 339.

39. *Iggerot Moshe, Yoreh Deah* II, *ibid.*

person who is in great pain and cannot recover. If it is permitted to remove the distraction which is keeping him alive, it certainly shouldn't be necessary to take positive steps to keep him alive.

Based on what we have seen so far, there seems to be little requirement to attach a dying person to a machine in the first place, if the machine will only prolong pain (or dying) without effecting healing.⁴⁰ We have also seen that the *Shulchan Aruch* permits removing an impediment to dying if the person is in pain. Since the mortally sick *gosses* is certainly in pain and certainly wants to die,⁴¹ we should not try to stop the will of the Almighty.

But if the patient is already hooked up to a machine, may he be removed from it? Is it analogous to the case of a *gosses*, whom it is forbidden to move?⁴² *Beit Lechem Yehudah*⁴³ writes that it is permitted to remove the patient from a machine, and it is not as if we are causing the early demise of the *gosses*. Rather, he sees it as analogous to removing specks of salt from the tongue of a dying person, which the *Ramo* allows. However, most *poskim* do not permit a dying person to be unhooked from the machine which is keeping him alive; they maintain that the *Ramo* allowed removing the salt (whose sensation was keeping the person alive) but only without touching the *gosses*.

One Life For Another

40. Ibid. Rav Feinstein writes that every *gosses* is considered to be in great pain (and there is no mitzva to prolong pain), even if the doctors claim that the patient feels no pain.

41. Ibid.

42. See *Taz, Yoreh Deah* 339:2.

43. *YD*, ibid.

A critical problem in this area, which has become a viable reality only recently, is the question of taking an organ from a dying person to save the life of another person.⁴⁴ There are certain situations where the doctors can perform a transplant only when taking the organ from a live person; transplant science does not yet make it possible to use the heart or certain other vital organs from a dead person. However, once the heart is removed for transplant, the donor of course dies instantly. This poses a dreadful quandry: on the one hand, a life might be saved by receipt of a donor organ. On the other hand, "harvesting" the organs of a still-living donor seems tantamount to murder.

That is the opinion of R. Moshe Feinstein, who in 1968 absolutely forbade taking a heart in such manner, expressing amazement that "civilized governments are permitting wicked doctors to kill people."⁴⁵ (He refers to "two victims" of the procedure – the donor and the recipient. Obviously, at that time organ transplant knowledge was in its infancy, and recipients never survived for long.)

As always, we look to our rabbinic literature for guidance.

44. Taking an organ from a healthy person for transplant into a sick person is a separate question. For a full discussion of the many facets of this halachic issue, see the article on organ transplants by Rabbi Reuven Fink in *Journal of Halacha and Contemporary Society*, Vol. IV.

In setting aside any halacha in order to save a life, Jewish law follows the rule that such violation may occur only when there is "*choleh lefanecha*," a sick person actually physically present who needs to be saved.

In Vol. XVII of *JHCS*, there are a number of articles on how to determine the time of death, an issue highly pertinent to this question.

45. *Iggerot Moshe, Yoreh Deah* II, 134.

In the Gemara we find: If an enemy surrounds a town and demands that one or more hostages be handed over (to be killed) or else they will kill everyone in the town, the law is that we are not permitted to hand over anybody, even if all the townspeople will be killed. The Gemara lays down the rule: "we do not take a life to save a life."⁴⁶

Albeit the talmudic rule is that we do not sacrifice a life for a life – for who says your blood is redder than his? – that logic doesn't really apply in the case of a heart donor and the recipient. For the donor is always a person who is virtually dead, or will die very shortly, while the recipient is a person who has the potential for a relatively normal life span, once the transplant is effected. It may not be true in such a case that "your blood is not redder than his," for arguably the recipient's life *should* take precedence over the one who will die momentarily anyway.

Perhaps we can find a precedent for the question of taking the heart from a dying person to save the life of someone who might thereafter live normally, in a case raised by the *Minchat Chinuch* centuries ago.⁴⁷ If two people are captured, and the captors are going to kill one of them, may he be saved by substituting for himself the other man, who is so sick anyway that he will not survive the year (*trefa*)? Surely it would be permitted, rules the *Minchat Chinuch*, inasmuch as the "lasting life" (*chayei olam*) of the healthy person is indisputably superior to the ephemeral existence (*chayei sha'a*) of the *trefa*. But his ruling is categorically denounced by the *Noda Biyehuda*, "I have never heard such a thing in my life!"⁴⁸

46. *Sanhedrin*, chapter 8.

47. 296, n. 28.

48. *Choshen Mishpat* 59.

Nevertheless, there is a story in the Gemara which seems to set a similar precedent: a rabbi, Ulla, was once traveling with a group. One of the criminals in the group took out a knife and slit the throat of another traveler. He turned to Ulla (while the victim was still alive) and asked "How am I doing?" to which Ulla responded, "Great!" Thereupon, the murderer finished killing the other man.⁴⁹ Discussing this story, the *Tiferet Yisrael* asks, how could Ulla have said such a thing? What about the *chaye sha'a* (few moments of life remaining) of the victim? Wasn't Ulla abetting in the murder of his fellow traveler? To which *Tiferet Yisrael* answers, "That would be true [that he is assisting in someone's murder] if there were no alternative of sustained life (*chayei olam*). But when [by flattering the murderer he had a chance for] *chayei olam* [for himself], then certainly that life takes precedence."⁵⁰

A further incident in the Talmud which might shed light on the question if one is allowed to sacrifice a life to save another life is recorded in *Pesachim*.⁵¹ The Gemara there heaps praise upon two brothers, Pappus and Lulianus. When the general of the Roman army occupying Israel became enraged over some crime that had been committed and threatened to wipe out the town unless the culprits were apprehended, these two "confessed" to the misdeed and were executed, although they were totally innocent of any wrongdoing. Their sacrifice saved the entire populace, and the Gemara concludes "no person can stand on their level."

What happened to the rule that one life may not be sacrificed for another? Are we to conclude that this is a variable, not a

49. *Nedarim* 22a. See also *Iggerot Moshe*, *Orach Chaim* II, no. 51.

50. *Tiferet Yisrael*, *Boaz*, *Yoma*, chapter 8, no.3.

51. 50a.

constant? Or perhaps the rule was suspended because so many lives were at stake?⁵² How do we make a distinction – quantity of lives, quality of life, length of life? The author of *Mekor Hachesed* writes "We [the group] are not permitted to hand over [a hostage to the enemy]...in order to save others. However, individuals may themselves [decide to] do this."⁵³ Apparently, an individual does have some leeway to voluntarily give up his life for a greater good. However, the present study is not the place to discuss this noble option.

To return to the thorny question of heart transplant: a perusal of the *poskim* who have dealt with this new issue indicates their virtual unanimity that Torah law cannot sanction it as it is presently performed. The author of *Nishmat Avraham* writes, at the conclusion of a thorough analysis of all the sources:⁵⁴

And from all that has been said, it emerges that it is certainly forbidden to remove the heart of a person who is near death (*trefa*) and even more so [the heart of a] *gosses* in order to save the life of another person who is [otherwise] healthy. And this is how the giants of our generation have ruled.⁵⁵

52. That is the position of R. Moshe Feinstein. *Iggerot Moshe, Yoreh Deah* II, 134.

53. 599, no. 5. See also *Noda Biyehuda, tanina, Yoreh Deah* 74 and 157.

Apparently, this is the Jewish law also as understood by the *Sefer Chassidim* (No. 598): If there are two people together and the enemy wants to kill one of them; if one of them is a Torah scholar and one is an ordinary person, it is a mitzva for the ordinary individual to say, "kill me, and not my friend."

54. *Yoreh Deah* 148.

55. Among the sources he cites are the following: *Iggerot Moshe* II, 174; *Tzitz Eliezer* X:25; *Minchat Yitzchak* V:7; R. Moshe Kasher,

Surgery to Alleviate Pain

Life-and-death decisions do occasionally arise; however, far more common are instances of "ordinary" surgery. Since Jewish thinking basically considers that a person doesn't really "own" his body, but is only permitted to use it and care for it in accordance with the dictates of halacha, the question arises whether surgery is permitted in non-life-threatening situations.

Rambam encodes the law as follows:

It is forbidden for a person to cause [bodily] damage, whether it be to himself or to others...[and if he does] he has transgressed a negative biblical commandment (*chovel be'atzmo*).⁵⁶

This ruling might be construed as disallowing surgery when it is not a matter of life or death. Indeed, that is the interpretation of some major *poskim*. One time, a question was raised about performing an operation to remove kidney stones, a condition which induced much pain but which the doctors considered as not in itself life-threatening. Rav Yaakov Emden did not allow it:

And whenever there is no danger in the pain, it is not good to [operate] on it, even on a weekday [and certainly not on Shabbat]. A person is not permitted to put himself in a situation of possible danger to his life...and many persons have hastened their death through operations.⁵⁷

Menachem Chalak, 27.

56. *Hilchot Chovel Umazik* 1. See also *Iggerot Moshe, Choshen Mishpat* 150, who discusses donating blood for money; also the responsum of Rav Neuwirth, cited in *Nishmat Avraham Yoreh Deah*, p.265.

57. *Mor U'ketziah* 328. See also *Chatam Sofer, Yoreh Deah*

Perhaps, however, the effect of this strongly negative position is somewhat attenuated by the realization that when Rav Yaakov Emden expressed this opinion some two hundred years ago, it reflected the medical realities of his age. No doubt the danger of having surgery then far outweighed the benefits which the surgery might bring. Furthermore, he seems to eschew surgery not because of the *issur* of *chovel be'atzmo*, but rather because of the inherent danger of the procedure at that time, or possibly due to problems with the anesthesia.⁵⁸

Under what conditions, nowadays, may a person opt to undergo surgery which is not essential to save his life but which may relieve pain? As we have seen, there are *poskim* who have ruled that surgery even in such a case is impermissible. But there are many *rabbonim* who adopt a more permissive attitude towards surgery whose major function is to relieve pain. The tendency today seems to be not to consider this type of surgery as "elective" but rather as necessary for the maintenance of a reasonably normal life.

There is adequate precedent in Jewish law for permitting surgical or medical procedures to reduce pain. The author of *Shemirat Shabbat Kehilchata*⁵⁹ notes that in talmudic times,

76; *Minchat Yitzchak* I 28.

58. In *Tzitz Eliezer*, Vol. IX, 17:6, there is a responsum concerning a patient dying of prostate cancer, which had already begun to spread. The doctors declared that they could not prolong his life, but they said surgery would at least reduce the pain. Permission was granted by the rabbi, even though it could not heal the patient, because even the reduction of pain in itself is a permissible reason to allow surgery; furthermore, it stands to reason that a patient who is not only suffering from a malady but also experiencing great pain, will not be able to survive as well as one who has less pain.

59. *Yoreh Deah* 190:4.

the Gemara permitted the practice of bloodletting, which was often done to relieve discomfort. Tosafot⁶⁰ are of the opinion that living with pain is worse than death.⁶¹ And although, according to halacha it is not permitted for a son to cause his father to bleed, nevertheless, if the father is in great pain and there is no other doctor available, the Ramo permits the son to operate on his father in order to alleviate his pain.⁶²

Rav Shlomo Zalman Auerbach has ruled that since dental extractions are a commonplace nowadays, they cannot be considered within the category of a "dangerous procedure," and they are definitely permitted. *Nishmat Avraham*⁶³ further quotes Rav Auerbach as holding that when "everybody" does something, it can't rightfully be considered dangerous, for "G-d watches over the simple." Consequently, there seems to be little opposition nowadays to having surgery to alleviate pain.

Psychological Pain

How severe does the pain have to be in order for halacha to sanction surgery? Does psychological pain qualify as "real" pain? For example, if a person is dreadfully unhappy with his nose or some other physical characteristic, may he or she opt for plastic surgery? If the physical appearance is perceived as handicapping a person's opportunities for marriage or for employment, does this have any impact on the halacha?

There are two specific areas of Jewish law which are relevant to the question of this type of "elective" surgery:

First, there is the *issur* (prohibition) of *chavala*, causing

60. *Ketubot 33a*, "ilmalei".

61. Cited in *Nishmat Avraham, Orach Chaim* p.171.

62. *Ramo, Yoreh Deah* 241:3.

63. *Yoreh Deah* 155.

oneself bodily harm. As we have seen, this is forbidden by the Torah and is so redacted by Rambam and others in the law codes. However, some *poskim* have found avenues to be lenient in this regard. The *Minchat Yitzchak*⁶⁴ maintains that damaging the body is forbidden only if it is done with the intention to cause disgrace (such as punching someone in the nose, or kicking him).⁶⁵ Since one re-sculpts the nose for the enhancement of the person's appearance and for his benefit, it should be permissible. *Chelkat Yaakov* permits plastic surgery for a different reason – since a person who is too embarrassed to go out suffers great pain, it is permitted to perform the surgery in order to alleviate this pain.⁶⁶

The second issue concerns *sakana*, danger. Jewish law does not permit a person to put his life in danger, and any time a person has anesthesia, there is a certain degree of danger. *Minchat Yitzchak* writes that he is uncertain how to rule in this regard.⁶⁷ However, *Chelkat Yaakov* in his responsum⁶⁸ considers that if people generally engage in a certain behavior, even if it is dangerous, we cannot prohibit it. Instead, we rely on the assurance that "G-d watches over the simple." Thus, women are permitted to marry and have children, even though there is an element of danger in every childbirth; people fly in planes, even though occasionally there are crashes; etc. Therefore, he rules that it depends on the type of procedure, on the doctor, and on the mental state of the patient.

Rav Waldenburg, however, reaches the opposite

64. I:105.

65. Rambam, *Hilchot Chovel U'mazik* 1.

66. *Chelkat Yaakov* III:11, based on a ruling in *Tosafot, Shabbat* 50b, s.v. *bishvil*.

67. *Ibid.*

68. *Ibid.*

conclusion. He rails against anyone's daring to change G-d's intentions, and considers that even the slightest danger would put this type of elective surgical procedure beyond the limits of halacha. Can one claim that "G-d made a mistake" when he created someone "ugly"?⁶⁹ He is adamantly opposed to such an approach. The Book of Proverbs tell us that "grace is false and beauty is vain." The true value of a person is in his G-d-fearing nature, not in his physical appearance!⁷⁰

Conclusion

We may sum up the conclusions of our investigation as follows:

*Halacha does not grant a person absolute control of his/her body. It is a mitzvah and obligation to guard and preserve one's health.

*When life is threatened, a person is obligated to do his utmost to preserve and extend his life. It is forbidden to withhold food, oxygen, or sustenance from any person, no matter how ill or hopeless the situation.

*When all that is left is a life of pain, rabbis may permit the patient not to take steps (or to have steps taken on his behalf) to extend that painful situation.

*Some *poskim* are of the opinion that all possible measures must be undertaken to extend life, even one of pain.

*The less certain the likely outcome of a procedure, the more leeway the patient has in choosing to undertake or to forgo it.

69. In *Ta'anit 20b*, there is an interesting tale concerning someone who made such an assessment.

70. *Tzitz Eliezer XI*, 42.

*A life of pain is so difficult, many rabbis would allow the patient to seek remedies for the pain, even if such remedies carry the potential for an earlier death. Some rabbis do not concur.

*The "pain" under discussion is severe and unremitting, making a "normal" lifestyle virtually impossible. According to some, psychological pain may be included.

Sources for the Debate: Torah Alone or Torah Together with Worldly Occupation

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A dispute exists among talmudic Sages whether one should study only Torah or combine Torah study with a trade or profession.

One talmudic passage asks,

What is to be learned from the phrase, "And thou shalt gather in thy corn"?¹ Since the Torah says "This book of the law shall not depart out of thy mouth,"² one might think that this injunction is to be taken literally. Therefore, it says "And thou shalt gather in thy corn," which implies that one should combine

1. Deuteronomy 11:14.

2. Joshua 1:8.

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Torah study with a worldly occupation. This is the view of Rabbi Ishmael. Rabbi Simeon ben Yochai says: Is that possible? If a man plows in the plowing season, and sows in the sowing season, and reaps in the reaping season... what is to become of the Torah? No; rather when the people of Israel perform the will of the Omnipresent, their work is performed by others..." Said Abaye: "Many followed the advice of Rabbi Ishmael, and it worked well; others followed Rabbi Simeon bar Yochai and were not successful."³

From this passage it appears that Rabbi Ishmael says that one should combine Torah study with worldly occupation, whereas Rabbi Simeon bar Yochai disagrees.

A related difference of opinion among the talmudic Sages arises from the question whether a father is obligated to teach his son only Torah or also to teach him a trade. Rabbi Meir says that a man should always teach his son a "clean and easy craft" whereas Rabbi Nehorai says that he would "abandon every trade in the world and teach his son only Torah."⁴ Most rabbinic decisors and commentators say that Rabbi Meir and Rabbi Nehorai do not argue, since the latter also agrees that a father is obligated to teach his son a trade.⁵

3. *Berachot* 35b. Even Raba there agrees with Rabbi Ishmael, and he worked when necessary.

4. *Kiddushin* 82a ff, where Bar Kappara says that a man should teach his son an easy and honorable trade. See there also for other opinions and examples.

5. See Maharsha, *Kiddushin* 82a; Yavetz, in *Lechem Shamayim*, *Avot* 3:17; *Shulchan Aruch Harav*, *Talmud Torah*, Chapter 3, last essay, s.v. *vehiney*; *Penei Yehoshua*, end of *Kiddushin*; *Chidah's Kisei Rachamim*, *Sofrim*, beginning of Chapter 16; *Nachal Eshkol*, Part 2, page 137; *Or Chadash* end of *Kiddushin*. However, *Biur Halacha* 306:6 writes that they argue but he does

This question of studying Torah only or of combining it with secular studies and a trade or profession has had its ups and downs throughout Jewish history. The argument still persists nowadays and each side offers proof to support its view.⁶

Some rabbis opine that we are obligated to study Torah alone without any secular studies. Those who study Torah full time need not engage in a trade or profession and can be supported by the community. Other rabbis believe that it is our duty to combine Torah study with the study of all secular fields of knowledge. We are also obliged to earn a living and not to rely on Torah study alone or on charity. This is the proper way, even for Torah scholars. Yet other rabbis write that only select individuals can limit themselves to Torah study only. The majority of Jews, however, should combine Torah study with worldly occupation. A fourth group states that the curriculum in rabbinical academies (*Yeshivot*) should not be combined with secular studies. However, each individual is obligated to learn science and a profession or trade. A fifth group opines that everyone must choose his way of life. Some people find it best to study Torah only, whereas others find it appropriate to combine

not cite all the aforementioned opinions. See J. Levy's essay in *Hamayan*, Tammuz 5751 (1991), pp 15 ff. The Talmud, *Eruvin* 13b, asks: "Is not Rabbi Meir the same person as Rabbi Nehorai? Therefore, they do not conflict with each other." See the Novellae of *Griz* on *Chaye Sarah* in the name of *Hagra*, that there is really no argument between them.

6. This active debate is alluded to by Maimonides in his *Mishnah Commentary* on *Avot* 4:5, where he states that he revoked his decision not to discuss certain Torah matters, because his teaching might not appeal to most Torah scholars, and decided to discuss them without regard to either previous or current authorities.

that with worldly studies and occupations on various levels. One should not establish hard and fast rules but consider individual circumstances of the person, the place, and the time.⁷

Below are cited sources which argue against and in favor of secular studies and engaging in a trade or profession.

Reasons For Opposing Secular Studies

a) Neglect of Torah study and waste of time

One should make the Torah one's main study and occupation, not subsidiary to anything else. One should not say: "I have studied Jewish wisdom, I will now study the wisdom of other nations."⁸

Some rabbis write that the rabbinic prohibition of reading

7. There are "seventy faces to the Torah" – see *Numbers Rabbah* 13:15; *Responsa Radvaz*, Part 3, end of #643 – because there are many interpretations, allusions, differences, simple and hidden textual meanings, morals, legends, and laws, and each person studies the Torah in his own way (*Avodah Zarah* 19a). Although the rabbis throughout the generations differed with each other, all spoke and interpreted the words of the living G-d (*Eruvin* 13b; *Gittin* 6b; *Yerushalmi Berachot* 1:4 and *Kiddushin* 1:1). In the same way, the various stages and phases in the science-versus-religion controversy should be viewed as various ways of serving the Creator, all being true. All Jewish Sages, however, agree that the preferred course of study is the study of the Torah. Some people study only Torah, whereas others study both Torah and science. Otherwise, the world could not exist.

8. *Torat Kohanim*, *Acharei* 13:11; *Sifri*, Deuteronomy 34; *Shulchan Aruch Harav*, *Hilchot Talmud Torah* 3:7. See also *Yoma* 19b and *Avot* 1:15 which recommend that Torah study should be one's main occupation.

"external" (secular, apocryphal, or Gnostic) books⁹ is because these are foolish and nonsensical books which lead to neglect of Torah study.¹⁰ Books which contain no wisdom and no benefit are only a waste of time and are prohibited.¹¹

b) Concern about heresy and sectarianism

One who studies "external" books does not have a portion in the world to come.¹² External books are defined as books of heresy¹³ or apocryphal books such as the *Wisdom of Ben Sirah*.¹⁴ Some rabbis include the writings of Aristotle and his companions.¹⁵ The Talmud curses a man who teaches his son "Greek wisdom."¹⁶ A person should not study any

9. *Sanhedrin* 90a.

10. *Yad Ramah*, *Sanhedrin* 90a; Maimonides, *Mishnah Commentary, Sanhedrin* 10:1; Rashbatz, *Magen Avot* 2:14; *Responsa Rashba*, Part 1 #414.

11. *Mishnah* commentaries of Maimonides and Bertinoro, *Sanhedrin* 10:1.

12. Rabbi Akiva's view in *Sanhedrin* 90a. *Yad Ramah, loc. cit.*, cites those who disagree with Rabbi Akiva. Rabbi E. Wasserman, *Kovetz Shiurim*, Part 2 #27, explains that the study of such works alone is not the cause but may lead to actions and activities which may rob a person of his portion in the world to come.

13. *Sanhedrin* 100b and the commentaries *Kovetz Shiurim* and *Margaliyot Hayam*. See also Rabbi Bloch in *Hamayan*, Nissan 5736 (1976), pp 11 ff; *Proceedings of Association of Orthodox Jewish Scientists*, Vol. 1, 1966, p. 107; and *Encyclopedia Talmudit*, Vol. 15, section *Chochmot Chitzoniyot*, page 64, notes 108-111; all state that the intent here is to Christian books.

14. *Sanhedrin* 100b. See also *Yerushalmi Sanhedrin* 10:1; *Numbers Rabbah* 14:2.

15. *Responsa Rivash* #45.

16. *Sotah* 49b. Concerning the definition of this area of knowledge

books other than the Torah.¹⁷

Many contemporary *Roshei Yeshiva* have adopted the view that Torah study should be pursued alone, without any admixture of secular subjects. In fact, they disallow the introduction of any secular studies including the study of foreign languages into the curriculum of their schools.¹⁸

and the prohibition involved, see *Menorat Hamaor* 54:4 #267; *Midrash Shmuel*, *Avot* 2:4.

17. *Zohar*, Part 2, page 124. See also *Maharal*, *Netivot Olam*, Chapter 14. *Zohar* implies that only books on idolatry and heresy are referred to, but not standard branches of knowledge.

18. The heads of the Rabbinical Academy of Volozhin, Rabbis Soloveitchik and Berlin (known as *Netziv*), opposed the introduction of secular studies in the Academy by order of the government, even if it meant closing the Academy. An allusion to this view is *Ezekiel* 42:20, "to separate the holy from the profane." Rabbis E. Wasserman and E. Bloch opined that studying secular subjects produces danger of heresy and nullification of the Torah; however, they allowed secular studies needed to learn a trade or profession for the provision of one's livelihood. Rabbi J. Rosen of Rogatchov said that secular studies should not be ridiculed; formal courses should not be incorporated into Yeshiva curricula, but a father can allow his son privately to engage in such studies. Rabbi B.B. Lebowitz of Yeshivat Kamenitz absolutely prohibited university studies even for the sake of making a livelihood.

J. Levy, at the end of his book, *Shaarei Talmud Torah* and in *Hamayan*, *loc. cit.*, states that these were the answers by contemporary Rabbinical Academy heads (*Roshei Yeshiva*) to the question posed by Rabbi S. Schwab about whether or not it is permissible to study at universities. Rabbi Rosen's view was publicized in *Hamayan*, Nissan 5736 (1976), pp 4-9. Rabbi Wasserman's view is cited in his *Kovetz Shiurim*, Part 2 #47. Rabbi Lebowitz's view is expounded in his *Birchat Shmuel*, *Kiddushin* #27. The danger of studying at universities has perhaps decreased in recent years. Many Torah-observant Jews nowadays

Reasons in Favor of Secular Studies

a) General

Each of the seven scientific branches of knowledge¹⁹ is praiseworthy and valuable in the eyes of the Jewish sages. No Jewish source in homiletical (*aggadic*) literature in either the Jerusalem or Babylonian Talmud has any reference to rabbinic opposition to any of these sciences.²⁰

One should study the wisdoms of the world because they are all G-d-given to the peoples of the world. He gave them of His wisdom, may He be praised.²¹ Since nature surrounds us and protects us, it is not possible that it should not be part of the value system of our faith in G-d the Creator.²² There is nothing absolutely profane or mundane among the creations of G-d; rather there are holy things and some which are not yet holy but need to become so.²³

One rabbi explains that G-d's command to man to "subdue the earth"²⁴ means that one should master and appropriate the earth and its products for human purposes. This command requires an intimate knowledge and

attend university. The aforementioned rabbis were not totally opposed to secular studies; they were concerned about the university environment and atheistic professors. See J. Levy's *Yahadut Umada*, page 70; *Iggerot Chazon Ish*, Part 2 #50.

19. See below footnote 46, concerning the definition of the seven branches of knowledge.

20. J. Provenciali, in *Divrei Chachamim*, edited by E. Ashkenazi, page 71.

21. Maharal, *Netivot Olam, Netiv Hatorah*, Chapter 14.

22. Rabbi S.B. Orbach, *Shevilin*, Tevet 5723 (1963), pp. 44 ff.

23. *Orot Hakodesh*, part 1 page 143.

24. Genesis 1:28.

understanding of nature.²⁵ Another writes that holiness has to be built on the fundamentals of the profane.²⁶ Just as the soul needs a healthy body, holiness needs to be built on a solid base of the common or ordinary.²⁷ He who scorns wisdoms other than the Torah does so because he is ignorant of those wisdoms.²⁸

Those rabbis who permit secular studies allow the study of the wisdoms of other nations.²⁹ Since ancient times, rabbinic scholars have quoted non-Jewish savants in their works.³⁰ The talmudic Sages sometimes praise the scholars of other nations and accept some of their statements,³¹

25. Rabbi S.R. Hirsch, *Commentary*, Genesis 1:28.

26. *Orot Hakodesh*, Part 1, page 145.

27. *Ibid.*, page 685.

28. Introduction of Rabbi B. Moshkolov to *Euclides*, #540.

29. Tashbatz, *Magen Avot*, introduction, Part 2 #2; Maharal, *Netivot Olam*, *Netiv Hatorah*, Chapter 14; *Responsa Ramah* #7; *Meor Einayim*, *Imrei Binah* Chapter 2. Proofs are that the blessing "Who has given of His wisdom to human beings" is also recited for non-Jewish scholars (*Berachot* 58a); also, he who says a wise thing, even if he is not Jewish, is called wise (*Megillah* 16a); finally "there is wisdom among the nations of the world except they do not have the Torah" (*Lamentations Rabbah* 2:13).

30. *Tashbatz*, *ibid.*, cites proofs from the Talmud and himself made use of the wisdom of other nations. Also, Maimonides often uses knowledge from other peoples. The introduction to *Chovot Halevavot* states that the author made use of works of philosophers and sages of many nations. Rasag, in his *Emunot Vedeot* cites many views of heretics and rejects them. The same is true of Ibn Ezra, Rashbam and *Lekach Tov*. See also *Orot Hakodesh*, Part 1 pages 17-18. See further *Torah Shelemah*, additions to Vol. 19 #18.

31. *Pesachim* 94b; *Genesis Rabbah* 34:62. In his *Guide to the*

because it is proper to accept the truth from any person even if that person is less erudite, or from another nation. One should not pay attention to who says it but what is said.³² Listen to truth, no matter who says it.³³ A Torah scholar should not avoid the truth, regardless of the person who utters it, since we do not rely on the person but on the truth which he enunciates and which is verified.³⁴ Be not ashamed to accept the truth from any source, even from a lowly person.³⁵ For this reason, too, one can take issue with famous and renowned people if they say untruths.³⁶

One rabbi writes that one should follow the law of Moses but may study other wisdoms and sciences, provided that the Torah is the prime focus.³⁷ Another interprets the verse "It is good to take hold of the one but do not withdraw your

Perplexed, Part 2:8, Maimonides accepts the statement of the rabbinic Sages that in this matter the secular scholars are correct. Abraham, son of Moses Maimonides, in his *Ma'amar al Odot Derashot Chazal*, concludes that secular knowledge can sometimes surpass that of the Sages. However, Rabbenu Tam, cited by *Shitah Mekubetzet*, *Ketubot* 13b, s.v. *hashavtanu*, states that although secular scholars may surpass rabbinic Sages in their arguments, the truth is as stated by the Rabbis of Israel.

32. Rabbi S.T. Falaquero, introduction to his *Hama'ilot*.

33. Maimonides, Introduction to his *Eight Chapters*.

34. *Tashbatz*, loc. cit.

35. Rabbi S. Ibn Gabirol in *Mivchar Peninim*, *Shaar Hachochmah*.

36. Maimonides' Introduction to his *Commentary on the Aphorisms of Hippocrates* writes that even Hippocrates, undoubtedly one of the greatest physicians, is not perfect and can be criticized. *Raza*, in the introduction to his *Sefer Hamaor* states "fight for the truth and for Plato. Love both but love truth more."

37. Rosh, cited in *Minchat Kenaot*, letter 51.

hand from the other"³⁸ to mean that one should study Torah as well as secular studies.³⁹

The combination of Torah and science characterized Orthodox German Jewry in the nineteenth century. They introduced the practical ideology "Torah together with worldly occupation."⁴⁰

In recent years, other attempts to house Torah and science study together resulted in the formation of Bar Ilan University in Israel, Yeshiva University in New York and Technology Yeshiva High Schools. There also exist Institutes for research on various topics which combine Jewish and secular aspects. These include the Institute for Science and Technology, Tzomet, Schlesinger Institute for Medical Halachic Research, Institute for Agricultural Halachic Research, Institute of Jewish Law, and their like.

In general, the expression, "he that increases knowledge increases sorrow"⁴¹ means that science increases knowledge but also increases sorrow. The verse "And the just walk in them, [the ways of G-d] but transgressors stumble therein"⁴² can be read to mean that increasing knowledge by the

38. Ecclesiastes 7:18.

39. *Iggeret Kenaot*, *Responsa Radak*, cited in *Encyclopedia Talmudit*, vol. 15, section *chochmat chitzoniyot*, note 19.

40. Rabbi S.R. Hirsch and E. Hildesheimer were the founders of the ideological practices embodied in the concept of "Torah together with secular learning." For differences between them, see *Torah Im Derech Eretz*, edit. M. Breuer, 1987. In Germany, there also existed an organization of Orthodox Jewish academicians known as *Bund Jüdischer Akademiker*, portrayed in I. Grunfeld's *Three Generations*.

41. Ecclesiastes 1:18.

42. Hosea 14:10.

righteous increases their understanding of the way of truth, whereas increasing knowledge of transgressors increases sin and transgression.⁴³

b) Science helps in the understanding of Torah

All wisdoms and sciences are like perfumes and rings and baked goods supporting the Torah.⁴⁴ All wisdoms are also gateways and doors to the Divine.⁴⁵

The seven wisdoms are like a ladder to rise to the wisdom of G-d.⁴⁶ In order to understand and grasp the wisdom of the Torah which is included in divine wisdom, it is appropriate to study also the wisdoms of the world and of nature.⁴⁷

Maimonides writes to his disciple, Joseph ben Yehuda Ibn Aknin, that when he (Maimonides) saw his pupil becoming proficient in various sciences and wisdoms, he loved him even more for his rapid grasp of knowledge.

43. The basis for this view is the statement of Rabbi Yochanan ben Zakkai cited in *Kelim* 17:16 and *Baba Batra* 89b.

44. Maimonides, *Responsum* to Rabbi Yonathan Hakohen, cited in Blau's *Teshuvot HaRambam*, Vol. 3, page 57.

45. In the *Sermons of Chatam Sofer*, *Beshalach* page 112b, the author states that one must nevertheless give precedence to Torah study over secular studies. *Novellae Chatam Sofer*, *Baba Batra* 21a states that a child's education is primarily Torah and only later includes a trade or profession.

46. Rabbeinu Bachya, *Avot*, end of Chapter 3; Maharal, *Netivot Olam*, *Netiv Hatorah*, Chapter 14. Bachya lists the seven branches of knowledge as logic, mathematics, measurements, natural science, astronomy, music and theology.

47. Rabbi Hillel of Sokolov, *Kol Hator*, chapter 5, part 2:12 in the name of *Hagra*.

Maimonides further compliments his disciple for his expertise in logic and states that he is now ready to reveal to him the secrets of the books of the prophets.⁴⁸

A person who first studies the entire Talmud can then study other wisdoms, beginning with the "seasons, constellations and numerical valuations" which allude to the learned sciences of astronomy, mathematics, and geometry. These can then lead to the other natural sciences and the theological sciences.⁴⁹

All wisdoms need our holy Torah and are included in it. The more a person lacks knowledge of other wisdoms, the more he lacks Torah knowledge, for the two are interconnected.⁵⁰ Nowadays one must seek out the study of sciences because such study enhances the light of Torah.⁵¹

To fulfill all the Torah commandments, it is helpful to have an understanding of natural sciences. For example, one must know botany to fulfill the precepts relating to diverse kinds of seeds and the sabbatical year. One must understand veterinary medicine in order to fulfill precepts relating to non-kosher animals, first-born animals, and blemishes in animals that would render them disqualified for the Temple. One must know medicine to fulfill precepts relating to blemishes of priests, the laws of a man or woman with flux, menstruation, and ritual impurity, and the laws

48. *Letter of Maimonides* to his disciple Joseph Ibn Aknin.

49. Meiri, *Avot* 3:18. In his *Treatise on Logic*, Part 14, Maimonides speaks of mathematics, engineering, astronomy, and music.

50. Rabbi Baruch of Sokolov, Introduction to *Euclides*, the Hague, 5540 (1780). Rabbi Yisrael of Sokolov, in the introduction to his *Peat Hashulchan*, writes that *Hagra* knew many branches of knowledge including algebra, geometry, engineering, and music.

51. *Orot Hakodesh*, Part 1, page 51.

of murder. One must know astronomy in order to fulfill precepts relating to intercalation of the month or year. One must know music in order to fulfill the precepts relating to the songs of the Levites in the Temple. One must understand architecture in order to build the Temple; and mathematics and geometry to fulfill the laws of boundaries.⁵²

Similarly, many other Torah laws can be better understood with a knowledge of science.⁵³ To properly understand the fundamentals of the Torah requires an expertise in many disciplines and sciences.⁵⁴ The Talmud says that knowledge of seasons and numerical equivalents are the "desserts" of wisdom.⁵⁵ This adage is interpreted to refer to mathematics (or astronomy) and geometry.⁵⁶

Talmudic and Jewish homiletical literatures clearly

52. See *Kuzari*, part 2:63-64; Rabbi J. Rosen of Rogatchov, *Hamayan*, Nissan 5736 (1976), pp 4 ff. See Rabbi M.H. Luzzato who, in his *Derech Chochmah*, writes that although it is not obligatory to study mathematics and engineering, a knowledge of them is necessary to fulfill the precepts about diverse kinds of seeds and plants (*kilayim*), boundaries, and other laws.

53. For example, Ramban wrote a letter to his son in which he relied on archaeological findings to explain certain passages in the Torah; *Rasag* studied geography to help identify *Nachal Mitzrayim* as El-Arish in Egypt; the author of *Kaftor Vaferach* held conversations and discussions with Arabs to identify biblical sites and locations.

54. Maimonides, *Treatise on Resurrection*.

55. *Avot* 3:18.

56. *Magid Mishneh*, *Genevah* 8:1; *Commentary of Rabbenu Yonah* and *Tosafot Yom Tov*, *Avot* 3:18; *Rashbatz*, *Magen Avot* 3:18. Others, however, such as Rashi, *Bertinoro*, *Tosafot Yom Tov* and *Magen Avot* suggest that the intent may be to astronomy and the intercalation of the moon calculations.

indicate that our Sages were experts in many wisdoms and sciences. They were also experts in farming and agriculture,⁵⁷ because the Torah encompasses all branches of knowledge, even the most trivial.⁵⁸ This is what Moses meant when he said, prior to his death, "For this is your wisdom and discernment in the eyes of the nations."⁵⁹ He who wishes to convince himself of this truth need only look at the sciences and wisdoms quoted in the Mishnah and the Talmud, which represent only a small fraction of the natural and theological wisdoms and measurements and characteristics of the talmudic Sages. He will then be convinced that they can be praised for their wisdom compared to all the other peoples of the world.⁶⁰

Some of the talmudic Sages engaged in actual scientific experimentation to better understand halachic matters.⁶¹ No neglect of Torah is thereby implied. On the contrary, such behavior strengthens Torah observance.

The need for expertise in various sciences and other branches of knowledge is most apparent in relation to the greatest scholars – the members of the Sanhedrin (High Court). Only wise men could be appointed to the Sanhedrin,⁶²

57. *Shabbat* 85a and Rashi there, *s.v. umena lan.*

58. *Kuzari*, part 2:63-64.

59. *Deuteronomy* 4:6.

60. *Kuzari*, part 3:39. See also Maimonides, *Guide to the Perplexed*, Part 1:71.

61. For example: Rav said that he studied veterinary medicine for eighteen months with a shepherd to recognize temporary and permanent blemishes (*Sanhedrin* 5b). See also *Tosefta Niddah* 4:8; *Bechorot* 45a; *Niddah* 30b. *Niddah* 25b and 22a, respectively, discuss embryological and gynecological topics.

62. *Sanhedrin* 17a; Maimonides *Mishneh Torah*, *Sanhedrin* 2:1.

and they had to be somewhat knowledgeable in other disciplines such as medicine, mathematics, and their like.⁶³ They were required to have knowledge of accepted practical and theoretical branches of knowledge.⁶⁴ Thus, our Sages were experts in many disciplines.⁶⁵ Moreover, members of the Sanhedrin were experts in idolatry and apostasy so that they could judge sinners in these areas.⁶⁶

On the other hand, an understanding of science and study of nature can bring one to love and fear of G-d. Quite a number of biblical and rabbinic dicta confirm this.

Knowledge of nature is the way to love and to fear the Lord, for when a person studies and understands the wonders of G-d's creations and works, and thereby appreciates His unending and boundless wisdom, he will straightaway love Him, praise Him, glorify Him, and strongly long to know His great name. And when he ponders these matters, he will recoil frightened and realize that he is a small creature, lowly and obscure, endowed with slight and slender intelligence, standing in the presence of Him who is perfect in

63. Maimonides, *ibid.*, and *Keseph Mishneh* there; *Margoliot Hayam*, Sanhedrin 17a.

64. *Kuzari*, part 2:63-64.

65. *Encyclopedia Talmudit*, Vol. 15, section *chochmot chitzoniyyot*, page 225, writes that this is evidence for the Sages' knowledge of philosophy; *Kuzari*, loc. cit. writes that these branches of knowledge were widespread even among the general Jewish populace.

66. Maimonides writes that he studied "all the books of idolatry" in the world. See his letter to the Rabbis of Marseilles in *Kovetz Teshuvot HaRambam*, page 25. See also his *Guide to the Perplexed* 3:29.

knowledge.⁶⁷

When a man reflects on these things, studies all these created beings, from the angels and spheres down to human beings, and so on, and realizes the divine wisdom manifested in them all, his love for G-d will increase, his soul will thirst, his very flesh will yearn to love G-d. He will be filled with fear and trembling, as he becomes conscious of his own lowly condition, poverty and insignificance.⁶⁸

One can only love G-d with the knowledge with which one knows Him. According to the knowledge will be the love, whether little or much. Therefore, a person should devote himself to the understanding and comprehension of those sciences and studies which will inform him concerning his Master as far as his ability to understand and comprehend.⁶⁹

Knowledge of nature also teaches ethics and morality.

67. Maimonides, *Mishneh Torah, Yesodei Hatorah* 2:1. *Hameforesh* there explains that he who wishes to understand miracles should study sciences until he properly comprehends the creations of G-d.

68. *Ibid.*, 4:12.

69. *Ibid.*, *Teshuva* 10:6. In his *Guide of the Perplexed* 3:23, Maimonides shows that Job understood the truth after he studied the activities of nature. See Rabbi J. Kapach's essay in *Techumin*, Vol. 2, 5741 (1981), pp 242, ff. According to Kabbalah, the word "World" (*olam*) is derived from the term hidden (*helam*) which means that the world and nature in it are the hidden ways of the Lord which can be clarified by studying nature. *Aderet Eliyahu* shows that He oversees the world through nature and only His name *Elohim* is used in the biblical account of creation. Ramban points out that the Hebrew word *Va-Elohim* (and the Lord) has the same numerical equivalent as the word *Hateva* (nature).

Our rabbis cite examples: if the Torah had not been given, we could have learned modesty from the cat, honesty from the ant, chastity from the dove, and good manners from the cock.⁷⁰

d) Knowledge of nature leads to sanctification of G-d's name

The Talmud explains how the name of G-d is sanctified by the knowledge of certain sciences, such as astronomy. It is one's duty to calculate the cycles and planetary courses in order to increase our wisdom and understanding in the eyes of the peoples of the world.⁷¹ Some rabbis write that knowledge of various sciences and wisdoms makes the Gentiles take positive notice of the wisdom of the Jews, thereby sanctifying the name of G-d.⁷² The Gaon of Vilna instructed his disciples to study the seven worldly wisdoms as much as possible in order to ennable the wisdom of Torah in the eyes of the peoples of the world. Many great Sages throughout Jewish history sanctified G-d's name through their great secular knowledge and wisdom in the eyes of the Gentiles.⁷³ Rabbi Simcha Zissel of Kelem also praised the study of sciences to show that observant Jews are also knowledgeable in worldly sciences.⁷⁴ Certainly, Jews who have relationships with non-Jews in business or in professions should be knowledgeable in matters that might

70. *Eruvin* 100b. Since the Torah was given, we no longer need to learn these characteristics from these creatures.

71. *Shabbat* 75a. See also J. Levy, loc. cit., page 63, who says that not only astronomy but all natural sciences are included.

72. Rabbi Jacob ben Machir, *Minchat Kenaot* #39.

73. Rabbi Hillel of Sokolov, *Kol Hator* 5:2.

74. Rabbi N. Lamm, *Torah Umadda*, 1990, pp. 31-32.

impress others to respect Jews and thereby sanctify the name of G-d.⁷⁵

e) Knowledge of science is needed to answer unbelievers

The admonition "know what to answer an unbeliever"⁷⁶ is interpreted by some rabbis to allow and even mandate the study of various wisdoms including philosophy.⁷⁷ In addition it is permissible to study Christian theology books and laws in order to be able to debate them.⁷⁸ However, many Rabbis allow only occasional but not regular study of such Christian books.⁷⁹

Reasons For Engaging in A Trade or Profession To Earn A Livelihood

a) Commendation of work and trade

75. Ramchal, *Derech Chochmah*, s.v. *hamin hashlishi*.

76. *Avot* 2:19; *Sanhedrin* 38b. Concerning various textual readings of this adage, see D. Raphael's essay in *Techumin*, Vol. 3, 5742 (1982), pp. 477 ff.

77. *Sifri*, Deuteronomy 18:9; Meiri, *Avot* 2:18 and *Sanhedrin* 90a; Rabbenu Bachya, *Iggeret Kenaot*, page 5; Maharal *Netivot Olam*, *Netiv Hatorah*, Chapter 14; *Chovot Halevavot*, *Shaar Hayichud*, Chapter 2; Rabbi S.R. Hirsh, *Ateret Tzvi* on tractate *Avot*.

78. Maimonides, *Mishnah Commentary*, *Avot* 2:18. *Magen Avot*, *Avot* 2:14 writes that for this reason, we allow ourselves to study those sciences; Abraham, son of Moses Maimonides, *Iggerot Kenaot*, page 17.

79. *Tiferet Yisrael*, *Sanhedrin* 10:8; *Lechem Shamayim Sanhedrin*, beginning of Chapter 10, see also *Responsa Yavetz*, Part 1, end of #41; *Siddur Bet Yaakov*, *Hanhagat Talmud Torah* 2.

In many places, the talmudic Sages and Maimonides commend work and a trade. For example: "love work and despise public office."⁸⁰ What should a man do if he has no work? If he has a dilapidated courtyard or a waste field, let him go and attend to it rather than be idle.⁸¹ Even Adam, the first man, did not taste a morsel until he had done some work; even the Holy One, blessed be He, did not cause His presence to dwell in Israel until they had performed some work.⁸² Labor is more precious than ancestral merit.⁸³ The merit of labor stands even where ancestral merit cannot stand.⁸⁴ A man who lives from the labor of his hands is greater than one who fears heaven.⁸⁵ Flay carcasses in the market place and earn wages, and do not say "I am a priest and a great man and it is beneath my dignity."⁸⁶ Great is labor for it honors the worker.⁸⁷ Great is labor for it warms the worker.⁸⁸ "And thou shalt shew them"⁸⁹ refers to their house of life,⁹⁰ which means industry and trade, the means

80. *Avot* 1:10. *Magen Avot* says that a person should not consider it undignified to work for a living even if he is financially self sufficient.

81. *Avot de Rabbi Nathan* 11:1.

82. *Ibid.*

83. *Tosefta Kiddushin* 1:11; *Genesis Rabbah* 74:12.

84. *Tanchuma, Vayetze* 13.

85. *Berachot* 8a. See also Maimonides *Mishnah Commentary, Avot* 4:5.

86. *Pesachim* 113a; *Baba Kamma* 110a.

87. *Nedarim* 49b.

88. *Gittin* 67b.

89. *Exodus* 18:20.

90. *Baba Metzia* 30b.

of a livelihood.⁹¹ "And you shall choose life"⁹² refers to a trade.⁹³ Adam, the first man, learned all trades.⁹⁴

Sustenance is likened to redemption. Some say that sustenance is even greater than redemption, because the latter comes through an angel whereas sustenance comes through the Holy One, blessed be He.⁹⁵ Acquire a trade together with Torah knowledge.⁹⁶

A person who maintains himself by the labor of his hands is praiseworthy. This was the normal practice of the early pious ones. Thus, one secures all honor and happiness in this as well as the next world.⁹⁷ One should always restrain himself and submit to privation rather than be dependent upon other people or cast himself upon public charity. It is better to strip hides off animal carcasses than to say to other people, "I am a great sage, therefore, provide me with maintenance."⁹⁸ Four things require vigor, and one of them is a worldly occupation.⁹⁹ For sustenance, even a vow made

91. Rashi, *Baba Metzia* 30b. However, Rashi, *Baba Kamma* 100a, s.v. *bayit* states that it refers to the study of Torah.

92. Deuteronomy 30:19.

93. *Yerushalmi Peah* 1:1.

94. *Genesis Rabbah* 24:7.

95. *Ibid.* 97:3.

96. *Ecclesiastes Rabbah* 9:7. See also *Kiddushin* 30b. See further the importance of work in *Yerushalmi Ma'aserot* 2:4 and *Mechilta* of Rabbi Simeon ben Yochai, *Yitro* 19:9.

97. Maimonides, *Mishneh Torah, Talmud Torah* 3:11, according to *Berachot* 8a.

98. *Ibid., Matnot Aniyim* 10:18, according to *Pesachim* 113a.

99. *Berachot* 32b. See Rashi there, s.v. *derech eretz*.

on behalf of the public can be nullified.¹⁰⁰

b) The obligation to teach one's son a trade

A person is obligated to teach his son a trade.¹⁰¹ He who does not teach his son a trade teaches him to be a thief (brigandage).¹⁰² A person should teach his son a clean and easy craft.¹⁰³ One may make arrangements on the Sabbath to teach one's child a trade, because this is considered as the affairs of heaven.¹⁰⁴ The obligation to teach one's son a trade is one of five obligations upon a father toward his son, all of which are biblical in nature.¹⁰⁵ Some rabbis permit the teaching of language and mathematics to young children together with their Torah studies, since such studies fall under the obligation of teaching one's son a trade, so that when they grow up, they will be able to earn a living.¹⁰⁶

Most of the commentators and rabbinic decisors support

100. *Birkei Joseph, Yoreh Deah* 228 in the name of *Tashbatz*; *Ramo, Yoreh Deah* 228:21.

101. *Kiddushin* 29a derives it from Ecclesiastes 9:9; *Yerushalmi Peah* 1:1 derives it from Deuteronomy 30:19.

102. *Kiddushin* 29a.

103. *Berachot* 63a; *Kiddushin* 82a.

104. *Shabbat* 150a; Maimonides *Mishneh Torah, Shabbat* 24:35; *Tur, Shulchan Aruch, Orach Chayim* 306:6. Rashi, *Ketubot* 5a writes that it is a commandment for a father to teach his son a trade.

105. *Mechilta Bo*, Chapter 18. See also *Ketubot* 52b.

106. *Sefer HaItim* #75 in the name of Rav Hai Gaon; *Responsa Vayomer Yitchak, Yoreh Deah* #99. See also *Responsa Tzitz Eliezer*, Part 9 #15-16.

the view that a father is obligated to teach his son a trade.¹⁰⁷ Therefore, he who refuses to teach his son a trade and relies on Rabbi Nehorai (mentioned earlier) is uninformed and is being misled by the evil spirit, which tries to cloak evil things in the mantle of piety. He who transgresses and does not teach his son a trade will have to explain his inaction in the future before the heavenly tribunal and will be appropriately punished. Such inaction is dangerous to the individual and to the community as a whole.¹⁰⁸

c) A spade with which to dig

Moreover, our rabbis frowned upon receiving monetary reward for one's Torah knowledge. It is forbidden to use the Torah "as a spade with which to dig"¹⁰⁹ because thereby one benefits from and misappropriates the holiness of the Torah.¹¹⁰ Thereby one also causes profanation of the Divine Name, shames the Torah, denigrates the honor of the Torah,

107. See Maharsha, *Kiddushin* 82a; Yavetz, *Lechem Shamayim*, *Avot* 3:17; *Shulchan Aruch Harav*, *Hilchot Talmud Torah*, Chapter 3, last essay, s.v. *vehinei*; *Penei Yehoshua*, end of *Kiddushin*; Chidah, *Kisei Rachamim*, *Sofrim*, Chapter 16: *Nachal Eshkol*, Part 2 page 137. *Or Chadosh*, end of *Kiddushin*. *Biyur Halacha* 306:6 writes that there is a difference of opinion between Rabbi Meir and Rabbi Nehorai – *Kiddushin* 82a – but all opinions are not cited. See also J. Levy, *Hamayan*. See further *Yisrei Lev*, *Yoreh Deah*, section *Chet*, page 16a.

108. *Sefer Habrit*, Part 2, essay 12, chapter 10. See also *Sedei Chemed*, section *alef* #230 and *Peat Sadeh* there #160 who quotes *Sefer Habrit*. *Lev Haivri*, Part 2 page 72b, writes at length about the need to teach one's son a trade.

109. *Avot* 4:5. The textual reading is slightly different in *Nedarim* 62a.

110. *Ibid.*

and cheapens it.¹¹¹

Some rabbis write that the ideation that one is obligated to fully support Torah scholars and rabbis who devote all their time to Torah study is totally wrong. There is no such obligation in the Bible or in rabbinic decrees. Rabbis never pleaded for their own support; rather they all had occupations and trades from which they sustained themselves, either easily or with difficulty. No poor rabbi ever criticized people of his generation for not making him rich. On the contrary, they were ashamed to accept public assistance.¹¹²

Anyone who makes up his mind not to work, but to study Torah only and live on charity, profanes the name of G-d, brings the Torah into contempt, extinguishes the light of religion, and deprives himself of life hereafter.¹¹³ A person should find an occupation or learn a trade in order to support himself and his family and not rely on the gifts of people or their loans.¹¹⁴ A person is not only allowed but is obligated to engage in business or a trade for his sustenance; it is forbidden to say "I will not work, and G-d will somehow provide my sustenance."¹¹⁵

A person who is favored by G-d and makes a good living

111. Maimonides, *Mishnah Commentary, Avot* 4:5; Idem, *Mishneh Torah, Talmud Torah* 3:10; Maharal, *Derech Chayim* 1:10; *Keren Orah, Nedarim* 62a.

112. Maimonides, *Mishnah Commentary, Avot* 4:5, cites Sages who were extremely poor yet worked for a living and did not accept public assistance. See *Keseph Mishneh, Talmud Torah* 3:10.

113. Maimonides, *Mishneh Torah, Talmud Torah* 3:10.

114. *Shelah, Shaar Haotot, Derech Eretz* 46.

115. *Responsa Iggerot Moshe, Orach Chayim*, Part 1 #111.

from his work is prohibited from taking public assistance.¹¹⁶ A person who studies Torah to benefit from it, either financially or in terms of being honored, is doing something prohibited.¹¹⁷

However, several sources in recent generations indicate that it is permitted to make a living from studying and teaching Torah, because now is a time of need or a temporary necessity. It is a time to act on behalf of G-d because the masses have set aside the Torah.¹¹⁸ Alternatively, rabbis are considered as receiving salaries for their time, since they could have earned a living by devoting that time to a trade or profession.¹¹⁹

d) The value and esteem of combining Torah study and work

Torah study is good together with an occupation¹²⁰ for

116. *Keseph Mishneh*, loc. cit.

117. *Ibid.*

118. *Ibid*; Rabbi J. Abarbanel's *Nachalat Avot*, Avot 4:5; *Yam Shel Shlomo*, *Chullin*, Chapter 3 #9; *Responsa Chatam Sofer*, *Choshen Mishpat* #164; *Iggerot Moshe*, *Yoreh Deah*, Part 2 #116.

119. *Responsa Tashbatz*, Part 1 #144-148. See also above footnote.

120. "Worldly occupation" (*Derech Eretz*) there refers to earning a living from a trade, profession, or business according to Maimonides and Rabbenu Yonah. So too is the view in *Avot* 3:5 and *Berachot* 35b. Rabbi David the Nagid, grandson of Moses Maimonides, in his commentary on *Avot*, explains worldly occupation to refer to all activities related to the preservation of the world including the study of various sciences. However, *Tiferet Yisrael* explains that it refers to ethics and humility. Thus, the term worldly occupation has numerous definitions including ethical inter-personal relations with others (Maimonides, *Mishnah Commentary*,

the exertion of them both makes sin forgotten. All Torah study that is not joined with work will cease in the end, and leads to sin.¹²¹

In regard to the relationship between Torah study and an occupation, some rabbis assert that Torah study is the main object,¹²² whereas others give importance to having an occupation.¹²³ Even while occupied at work, one should

Kiddushin, end of Chapter 1), culture (*Machzor Vitri*, *Avot* 3:17), settling or populating the world (*Kiddushin* 40b), natural customs (*Yoma* 74b), sexual intercourse (*Tiferet Yisrael*, *Avot* 6:5); and all human activities leading to perfection of one's life (Rabbi S.R. Hirsch, *Avot* 2:2). In general the term "worldly occupation" refers to moral relationships between man and his fellowman as well as man's conduct in speech, eating, drinking, dress, personal traits and characteristics and the like. See *Encyclopedia Talmudit*, Vol. 7, section *derech eretz*, pages 672-706, for a lengthy discussion on this topic.

121. *Avot* 2:2; *Numbers Rabbah* 13:15, *Ecclesiastes Rabbah* 7:22; Maimonides *Mishneh Torah*, *Talmud Torah* 3:10; *Semag*, positive precept #2, *Tur*, *Shulchan Aruch*, *Orach Chayim* 156:1; *Tur* and *Ramo*, *Yoreh Deah* 156:21. See the lengthy discussion in the biblical commentary of *Alshich*, *Tazria* page 176.

122. *Rash*, *Tohorot* 7:4; Rabbi Elchanan in *Tosafot Yeshanim*, *Yoma* 85b, s.v. *teshuvah*; *Tur*, *Shulchan Aruch*, *Orach Chayim* 156:1; *Tosafot Yom Tov*, *Avot* 2:2.

123. *Tosafot Yeshanim* *Yoma* 85b, s.v. *teshuvah* according to Rabbenu Tam. See also *Hagahot Maimoniyot*, *Talmud Torah* 2:2 and *Tosafot Rabbi Akiva Eger*, *Avot* 2:2. Zebulun and Issachar had a partnership in that the former were sea merchants and financially supported the latter to allow them to study Torah. Zebulun is cited first in the Bible to indicate their greater importance (*Genesis Rabbah* 99:11 and *Leviticus Rabbah* 25:1). Rabbenu Bachya, *Deuteronomy* 33:18, states that although Issachar was born first and was greater than Zebulun, Zebulun is cited first

review one's Torah studies.¹²⁴ Some rabbis reconcile these views and state that to those people who work far from home, their occupation is the main object but they should not neglect Torah study. To those people who live at home and study Torah intensely, Torah study is the main object, but they too must have a trade or an occupation.¹²⁵ Another way to identify the two groups is as follows: the general populace makes occupation the main object and combines it with Torah study, whereas Torah scholars make Torah study their life's work and engage in it day and night.¹²⁶

Some rabbis write that it is a positive biblical commandment to work for six days each week,¹²⁷ and that a person should strive to fulfill the divine precepts that deal with the land, such as plowing and sowing.¹²⁸ Others write that it is a biblical commandment to learn a craft in order to earn a living from the work of one's hands.¹²⁹ Others claim the obligation to learn a trade and work for a living is only rabbinic in origin, although Scripture provides allusional

because had they not supported Issachar, the latter would not have been able to devote all their time to the study of Torah. See further Rabbenu Yerucham, end of *Netiv* 2 and *Ramo*, *Yoreh Deah* 246:1. A similar situation is that of the brothers Simeon and Azariah, the latter of whom supported the former (*Leviticus Rabbah* 25:1). See also *Sotah* 21a.

124. Alshich, *Tazria*, s.v. *vehu mamorenu*; Rabbi Ch. Volozhin's *Nefesh Chayim*, Part 1, Chapter 8.

125. Bach, *Orach Chayim* 156.

126. Alshich, *Avot* 2:2.

127. *Avot HaRosh*, cited in the letter to the author of *Sedei Chemed*, *Pesachim* 50a, *Tosafot*, s.v. *makom*. See also *Avot de Rabbi Nathan* 11:1, who learns this teaching from Exodus 20:8.

128. *Chovot Halevavot*, *Shaar Habitachon*, end of Chapter 3.

129. *Responsa Bet Yaakov* #35 whose source is *Baba Metzia* 30b.

support.¹³⁰

One should work every day as much as necessary to make a living and devote the rest of the day and the night to Torah study. He who decides only to study Torah and not to work but to receive public charity, profanes the Torah. It is prohibited to profit from Torah study. Torah study without work leads to sin, and such a person becomes a burden on society. (All the aforementioned refer to a healthy person who is able to work and sustain himself.)¹³¹

Some early rabbinic decisors define a Torah scholar as one whose work is Torah study;¹³² that is to say, his main work is Torah study. He studies constantly and interrupts it only to earn a living, which is his obligation.¹³³ He does not work to become rich, but only to make ends meet for his sustenance.¹³⁴

Some Rabbis write that in Israel there is a special merit to working the land,¹³⁵ while others write that in Israel there is a particular obligation to engage in worldly occupations. One should not limit oneself to farming but engage in any and all occupations needed in Israel, so that we do not have to import shoemakers, bathhouse attendants, and their like from distant lands. However, in the diaspora, where all trades

130. *Sedei Chemed*, loc. cit.

131. *Responsa Tashbatz*, Part 1 #142-149; *Ramo, Yoreh Deah* 246:15. Nowadays, Deans of rabbinical academies and Yeshivot receive salaries for their services.

132. *Shabbat* 11a.

133. *Responsa Rosh* #15:8; *Tur, Yoreh Deah* 243. See also *Nimukei Joseph, Baba Bathra* 8a, s.v. *balu*.

134. *Responsa Maharam Alshakar* #19.

135. *Yavetz, Migdal Oz, Aliyat Habinyan*.

and crafts are represented, one should engage in an activity solely to earn a living.¹³⁶

A person should begin the day with communal prayers in the synagogue and then study some Torah before leaving for work, because Torah without work will be lost and a person may sin. In any event, a person should not make his work the main object, but Torah study should be his major goal.¹³⁷

Some Jewish Sages divided their day into three parts: one for Torah study, one for prayer and one for work. These Sages are called "the holy congregation."¹³⁸ Some of the great Torah Sages were woodchoppers, and others were water carriers,¹³⁹ while yet others engaged in a variety of other crafts and trades.¹⁴⁰

Those who fulfill G-d's precepts out of love while they are engaged in worldly occupations, as prescribed in Numbers 26:5, "And your threshing shall reach unto the vintage" will live well on this world and merit their portion in the world to come. But those who forsake all matters in this world and pay no attention thereto, as if they had no physical bodies, and occupy themselves solely with the service of their Creator

136. *Novellae Chatam Sofer*, *Sukkah* 36a, s.v. *domeh lekushi* and *Torat Moshe*, *Shoftim* 20:5, s.v. *mi ha'ish*.

137. *Tur*, *Orach Chayim* 155-156. See *Bet Joseph* there.

138. *Ecclesiastes Rabbah* 9:7.

139. *Mishneh Torah*, *Talmud Torah* 1:9.

140. See Maimonides, *Mishnah Commentary*, *Avot* 4:9; *Keseph Mishneh*, *Talmud Torah* 3:10. See also the detailed listing in *Encyclopedia Talmudit*, Vol. 7, section *derekh eretz*, page 689, footnote 305.

will live forever, both physically and spiritually.¹⁴¹

Thus, even when occupied in earning a living, one must remember the rabbinic axiom that Torah study should be primary and earning a living secondary.¹⁴²

141. *Commentary*, Leviticus 18:4.

142. *Avot* 1:15. *Avot* 6:5 states that minimizing worldly occupation is one of the 48 ways by which one acquires Torah learning. *Tosafot Yeshanim*, *Yoma* 85b, s.v. *teshuva*, explains that worldly occupation here means livelihood, whereas *Tiferet Yisrael*, *Avot* 6:5 says that it refers to sexual intercourse. See also *Berachot* 356 and *Yoma* 19b. See further J. Levy, *Hamayan*, Tishri 5737 (1977), pp 12 ff, for the definitions of permanent and temporary in this regard.

Letters To The Editor

To the Editor:

Rabbi Alfred S. Cohen concludes his article "Women and the Reading of the Megilla" (Fall 1995) with the advice that "for this mitzvah as for all others where a quorum of ten is required, it would be advisable for a woman to hear the Megilla read with a *minyan* of ten men." The halachic aspects of Rabbi Cohen's recommendation and of women attending shul generally are worthy of an expanded discussion.

Public prayer is preferred to private prayer because public prayer is more effective than private prayer (e.g. Rambam, *Mishneh Torah, Hilchot Tefilah* 8:1; *Tur* O.C. 90). Rambam states, "G-d does not loathe the prayer of many." With reference to women specifically, Ramo (O.C. 88:1) states that even in places where it was the custom for women not to attend synagogue during their *niddah* period, such women are permitted to attend during the High Holidays "because it is a great sorrow to them that all are gathered and they would stand outside." Rav Yehuda Herzl Henkin (*Bnei Banim* 1:5) cites other versions of this ruling as well as an extension to every Shabbat; he recommends arranging for babysitting in the synagogue in order to make it easier for mothers to attend public prayer on Shabbat. Rav Henkin also writes about the legitimacy of women at synagogue every day (*Bnei Banim* 1:4).

However, in contrast to the theoretical legitimacy within halacha of the presence of women at *minyan*, practical logistics are more problematic. Many *minyanim* at Orthodox synagogues are set up to accommodate men only. Sometimes

even on Shabbat no women's section is available. The problem occurs on Purim (when sometimes, but not always, a women's section is provided), and more notably at the daily *minyanim*.

Unfortunately, what tends to happen when women do come to shul under these circumstances is that, through no fault of the women, the atmosphere lacks *tzniut* and leads to lack of *kavanah*. For example, distraction results if someone tries to set up a partition as the *tefilah* is beginning. Such a partition is liable to be makeshift and poorly located, causing distraction during the *tefilah* as well. If no *mechitzah* exists at all, distraction and discomfort can also result when women pray in the hall or outside the window, e.g. as men walk by.

Rav Henkin (*Bnei Banim* 1:4) writes that a situation in which once in a while a few women pray in a synagogue *minyan* without a *mechitzah* in place, does not invalidate the *tefilah*. However, this is only *b'diavad*. Therefore, and certainly if many women are in attendance or at least one woman attends regularly, he rules to "build them a *mechitza* around the bench."

In a minority of Orthodox communities, especially where it is the custom for women to attend synagogue regularly (for example, on weekdays in the Bukharan Quarter of Jerusalem, on college campuses, and at synagogues here and there), space for women does in fact exist. Certainly, one positive aspect of women's prayer groups is the availability of a *bakovodik* place for women to pray. It is the case that women who would want to pray with a *minyan* in their communities, or when visiting if they are accustomed to attending *minyan* at home, stay away because there are no accommodations. Therefore, in order to avoid *b'diavad* situations and at the same time to afford women the potential to attend, it would be advisable for *mechitzot* to be

permanently erected in synagogues and at informal sites (e.g. workplaces) at which *minyanim* take place.

Sincerely,

DR. ALIZA BERGER
Jerusalem, Israel

* * *

Sir:

There has been a tendency in recent years to use halachic arguments to buttress what are essentially ideological positions. The most recent example of this is Rabbi Reuven Fink's articles "The Recital of Kaddish by Women," which he concludes by stating,

It would therefore seem that an attempt to "improve" or alter our sacred traditions and halachic precepts is in reality not a positive move but a negative one. Given the *zeitgeist* that prevails today, which serves as the impetus to change our time-honored laws concerning modesty, identity and role differentiation, this change is both pernicious and dangerous....Tampering with the synagogue's customary practices is clearly a step fraught with great danger. (p.37)

The core of the article is an attempt to show that the *psak* of my grandfather, R. Yosef Eliyahu Henkin ֤"ץ which permitted women to say kaddish *yatom* in shul from the women's section simultaneously with men saying kaddish, and my own elucidation thereof, was wrong and should not be followed. Quite to the contrary, Rav Henkin's approach to this issue reflected the classical halachic intuition and sensitivity that he was legendary for, and his *psak* remains as halachically valid and relevant today as the day it was written nearly 50 years ago.

The author raises three major objections:

First: Kaddish requires a *minyan* of ten men. The women's section is a separate domain from that of the men's section, and the girl is therefore saying kaddish only in front of the women, which does not constitute the requisite quorum for the kaddish to be recited. (p.30)

I discussed this objection in *Resp. Bnei Banim* II, no. 7. According to the views of the *Rishonim* in *Eiruvin* 72a and elsewhere, the great majority of *ezrot nashim* today are, for the purposes of a quorum, extensions of the *ezrat gevarim*, i. e. nine men in the men's section and one behind the *mechitzah* in the women's section constitute a *minyan*. There are two rationales for this: 1) In the absence of a floor-to-ceiling partition or separating wall which is rare today, the common roof unites the two into one room, following the opinion of *Hagahot haSemak*, *Or Zarua*, *Rabbeinu Yehonatan* and others. 2) The women's section is functionally subordinate (*beteilah, nigreret*) to the men's section (*Ramban, Rashba, Shulchan Aruch*).

A woman saying kaddish behind the *mechitzah* when there are ten men in the men's section, therefore, is saying kaddish with a *minyan*. This explains, as well, the permission given by many authorities for a woman to recite *birkat hagomel* in the women's section with the men in the men's section answering, even though *birkat hagomel* also requires the presence of ten men. The article cites my response to a different objection (see below), which I discussed in *Bnei Banim* only in a footnote, but makes no mention of the above at all.

The second objection is a historical one. My grandfather had to explain how he could counter the halachic precedent of hundreds of years standing which prohibited women from saying kaddish in the synagogue. This he did with characteristically simple logic:

In the time of the *Achronim* who discussed this, the custom was that one person would say kaddish – and therefore it was not for the *naarah* to say kaddish – for such was the way of the *Rishonim*, that the person saying kaddish would say it at the reader's desk (*lifnei hateivah*), and it certainly is not proper to allow the *naarah* to come to the reader's desk as a *shaliach tzibur* even for kaddish alone. But now that everyone says [kaddish] in his place and many are those who recite [kaddish], it should not be totally rejected. I have already written that it is correct for her to stand behind the *mechitzah*. (*Kitvei haGri'a Henkin* II, p. 6)

When combined with my observation that she can recite kaddish simultaneously with the male mourners in a quiet voice and thus not be heard at all, this meets virtually all objections of the *Achronim*:

*That the change in *minhag* would undermine established custom (*Resp. Chavot Yair*), or lead to confusion and to a woman acting as a *shaliach tzibur* or being counted as part of a *minyan* (*Resp. Torah LiShmah*). The visual and aural salience of a woman saying kaddish in such a fashion is virtually nil and the change in custom negligible – the men say kaddish exactly as before – as compared with her being the only person saying kaddish in the synagogue even if she is behind the *mechitzah* or, *kal vechomer*, in a *minyan* in her home in full view of the men (the latter case is the one discussed by *Chavot Yair* and *Torah LiShmah*). Nor is a woman who remains in the women's section likely to be confused with a *shaliach tzibur* or counted in a *minyan*.

*That listening to her may violate the prohibition of *kol ishah* (*Mateh Efraim, Elef Lemateh*) and her presence would be immodest and distract the men (*Aseh Lecha Rav* and others). When she recites kaddish simultaneously with men, the principle *trei kali lo mishtamei*, two voices are not heard at once, applies, and if she is completely inaudible there is

of course no *kol isha* to start with. Nor is there immodesty and visual distraction when she remains behind the *mechitzah*.

The author, however, casts doubt on the historical accuracy of distinguishing between past and present *minhag*, and challenges:

Rabbi Yehuda Herzl Henkin's assertion that all of the early negative decisions regarding a woman's saying kaddish were based solely upon the different practice than that of today...would certainly be enhanced by scholarly evidence showing the historical era and regions where the new custom, of many people saying kaddish in unison, began. If he could demonstrate that ...local custom was for one person only to say the kaddish, he might then have a tenable argument. (p.34)

Substitute "Rabbi Yosef Eliyahu Henkin," who first made the assertions, in place of "Rabbi Yehuda Herzl Henkin" in the above paragraphs, and one gets an idea of the breathtaking nature of such a challenge.

It can be stated unequivocally that in every Ashkenazic community from the Middle Ages through most of the 19th century, the custom was for one person only to say the kaddish. The Sephardic custom of mourners reciting kaddish together began to be adopted by European Ashkenazic communities only in the late 19th century. As recently as 1917, *Otzar Dinim uManhigim* referred to it as the custom of the Sephardim and of the "Ashkenazic communities *in America*." (italics added)

Resp. Binyan Tzion I no. 122 (written in 1854) states that "in all the regions of Germany and Poland there is not found even one community" which follows the Sephardic practice. *Resp. Chatam Sofer, Orach Chaim* no. 159 (written in 1800, *s.v. Od ani*) defends the accepted Ashkenazic practice against

R. Yaakov Emden's recommendation of the Sephardic one. And so forth. Moreover, the same authorities who oppose a daughter's saying kaddish in the synagogue discuss the halacha of who takes precedence over whom among *men* seeking to say kaddish, but omit any mention of the possibility of reciting kaddish in unison: see Resp. *Knesset Yechezkel Yoreh Deah*, end (pub. 1630); Resp. *Shevut Yaakov* II, no. 93 (pub. 1711); *Teshuva MeAhavah*, no. 229 (pub. 1715); and *Mateh Efraim, Dinei Kaddish Yatom, shaar 2* (pub. 1835). *Elef Lamagen*, which does mention the possibility and is printed together with the *Mateh Efraim*, is a later commentary and dates from 1908.

The third objection is that other contemporary authorities and/or Sephardic ones do not permit a woman to say kaddish. This is not an especially strong argument: Rav Henkin as a *posek hador* was fully competent to issue his own *psak*, particularly for Ashkenazim.

Moreover, the relevance of the rulings of Sephardic *poskim* the author cites as objecting to a woman's saying kaddish, even though Sephardic *minhag* has always been that mourners recite kaddish in unison, to the issue at hand is not clear. The role and participation of Sephardic women in Jewish life is very different from that of Ashkenazic women.

As a Rav in Bet Shean I found that some Sephardic synagogues had no women's section at all; the occasional women or two who came to shul simply stood at the back or the sides of the men's section (see *Bnei Banim* I no. 4).

We do not know therefore what were the circumstances the *Sdei Chemed* was referring to when he prohibited a woman from saying kaddish (*Aveilut*, 160), and whether the woman would have been standing behind a *mechitzah*. Resp. *Torah Lishmah* and the present-day *Aseh Lecha Rav* explicitly deal with women who say kaddish in full view of

the men. *Piskei Uziel*, on the other hand, prohibits women from saying kaddish on intrinsic grounds, explaining that kaddish is for men only. This is not the Ashkenazic view: even *Chavot Yair* accepted a daughter's saying kaddish at a *minyan* in her home in theory and prohibited it only for secondary reasons, while *Shevut Yaakov* permitted it in such a case altogether.

We are left where we started; at issue is essentially a question of policy and not of *issur veheter*. In this context my grandfather's words bear repeating:

It is known that were it not for kaddish, many would refrain from teaching prayer to their sons and would not come to synagogue. When they come because of kaddish, they also come a bit closer to Judaism the rest of the year, and for this reason itself one should not rebuff the *naarot* either, since it fosters closeness to Judaism.

On questions of policy, others may legitimately disagree. We should support any rabbi who declares "While such a practice may be technically according to halacha, in my opinion it would have dangerous consequences in my community and so I will not permit it" – although I would urge careful consideration of my grandfather's approach even in the white heat of current controversy; also see *Bnei Banim* I no. 37 sec. 12. What must be avoided is the confusion of halacha with polemics.

Sincerely,

RABBI YEHUDA HENKIN
Jerusalem

* * *

To the Editor:

Rabbi Reuven Fink raises an important issue in his well-written article on "The Recital of Kaddish by Women" (XXXI, Spring 1996). He, and many of the authorities he quotes, feel that it is wiser to prohibit women from saying kaddish; others, like Rabbi Aharon Soloveitchik, maintain that "if Orthodox rabbis prevent women from saying kaddish when there is a possibility for allowing it, it will strengthen the influence of Reform and Conservative rabbis. It is therefore forbidden to prevent daughters from saying kaddish" (*Od Yisrael Yosef Beni Hai*, no. 32). This public policy debate will no doubt continue for some time, but I feel this Letters Column is not the appropriate forum in which to continue it.

I would, however, like to correct two mistaken items that relate to me. Rabbi Fink correctly writes that in my letter in *Hadarom* I had noted briefly that the notion of women saying kaddish had support in the most *frum* circles. He then comments that I subsequently identified my sources in 1995 "in the journal of the Conservative movement" and that I had written that it "is all secondhand information and therefore all hearsay evidence."

I never wrote in a journal of the Conservative movement. I did publish an article in a journal sponsored by the American Jewish Congress ("Women and Kaddish," *Judaism*, 44:3, Summer 1995), expanding on material more briefly presented years earlier in *Tradition* (and, to a lesser extent, in *Hadarom*). As the issue is important, I would record here what I wrote there. I certainly never gave the impression, as Rabbi Fink suggests, that I was relating anything but reliable information.

I wrote that about a quarter a century ago, when the issue came up in a chapter of Yavneh, the National Religious Jewish Students Association, I asked one of the Yavneh leaders who was then studying with Rabbi Joseph B.

Soloveitchik to put the question to him. Rabbi Ezra Bick (now teaching at Yeshivat Har Etzion) wrote back:

I spoke to the Rav about the question you asked concerning a girl saying kaddish. He told me that he remembered being in Vilna at the "Gaon's Kloiz" – which wasn't one of your modern Orthodox shuls – and a woman came into the back (there was no *ezrat nashim*) and said kaddish after *ma'ariv*. I asked him whether it would make a difference if someone was saying kaddish along with her or not, and he replied that he could see no objections in either case – it's perfectly all right. Coincidentally, checking around, I came across a number of people who remember such incidents from Europe, including my father (in my grandfather's *minyan* – he was the rav in the town). [Rabbi Chaim Yechiel Michel Bick was the rav in Medzhibush in the Ukraine.]

When at the time I followed up with Rabbi Gerald J. Blidstein (then a faculty advisor to Yavneh and now at Ben Gurion University) about the issue, he wrote to me:

The kaddish matter is as follows: I was asked about the question last year, and looking into it, could find no reason beyond "general policy" for forbidding it. I spoke to R. Aharon Lichtenstein [then Rosh Kollel at Yeshiva University and now Rosh Yeshivat Har Etzion], who had the same reaction and said he would ask the Rav [Rabbi Joseph B. Soloveitchik, his father-in-law], which he did when I was on the other end of the phone. [Rav Lichtenstein] put the question to him, and then was directed to ask me whether the girl was stationed in the *ezrat nashim*. I, of course, answered in the affirmative, and the Rav then said that of course she could say kaddish.

Whatever one's opinion on the public policy issue, these notes should not easily be dismissed as hearsay comments from unreliable people.

Rabbi Fink also notes that I recorded in *Hadarom* that I had spoken with "an unnamed rabbi of the Mirrer Yeshiva who also witnessed the recitation of kaddish by women in front of prominent rabbis who approved of the practice." He then dismisses this with the comment that "*Roshei Yeshiva* who studied in the Mir denied that women said kaddish in the manner described" and suggests that the people had probably seen a girl under twelve reciting kaddish.

What I had written was that the *gabbai* of the *Mir Minyan* (the famous Brooklyn *shul*, the core of whose members are former students of the Mirrer Yeshiva who came to America after the Second World War by way of Shanghai) told me that one of the congregants, Rabbi Moshe Maaruch, who was born and raised in Vilna and who studied at the Mirrer Yeshiva, recalled that when his cousin died leaving an *adult* daughter and no sons, Rabbi Hayyim Ozer Grodzinsky had allowed her to say kaddish daily in the synagogue; another recalled that the Chafetz Chaim had similarly ruled. (The *gabbai*, Rabbi Pinchos Zelig Prag, recently confirmed this to Rabbi Fink privately.) That others studying at the Mir did not see this is not relevant.

In the *Judaism* article, I also noted that in her forthcoming study of the Eisheshok *shtetel*, Yaffa Eliach (whose photo collection of the townspeople of Eisheshok is part of the permanent exhibition at the National Holocaust Museum in Washington, DC) relates that Tsipora Hutner Kravitz, wife of Rabbi Yosef Kravitz, recalled to her that in 1935, when she was 14 years old, her brothers were out of town when her father, Rabbi Naftali Menahem Hutner, the *dayan* of the town, died. She said kaddish at the graveside and continued to say kaddish in both the town's New *Beit Midrash* and *Shtibel* until her brother returned. She recalled that at the same time Gitel Gordon, then 18 years old, said kaddish in the *Shtibel*.

None of this is particularly startling. Indeed, in Simha Raz's recently published book on R. Aryeh Levine, *Tsadik Yesod Olam*, Nili Neria recalls that when her father died after she had reached *bat mitzva* age, Reb Aryeh asked her and her sisters to say kaddish for their father, showed them where it was in the *siddur*, and then himself taught them how to say it.

RABBI JOEL B. WOLOWELSKY

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Rabbi Fink responds:

I would first like to thank both distinguished rabbis for their interest in this topic and for their input in elucidating some of the important issues and facts surrounding the subject. Many of these issues are beyond the scope of my original article. However, my discussion obviously has evoked the need to clarify some fundamental points pertaining to Jewish law and custom.

I would like first to address the halachic issues involved. The basic thesis of my article was that there is a long, traceable, written halachic history concerning the permissibility of women saying kaddish. I quoted over fifteen traditional published sources that serve as a halachic "travelogue" tracing the entire subject from its beginning until today. It is more than fair to say that the overwhelming halachic consensus is that the recitation of kaddish by women is not in consonance with either the halacha or with *minhag Yisrael*. This is a broad-based consensus from the full spectrum of rabbis and halachic decisors. It includes the *gedolei ha-poskim* of today and yesterday. These are the same *poskim* that we rely upon to render halachic decisions involving life and death issues. It includes Sephardic chief

rabbis as well as Ashkenazic chief rabbis.

As great as Rav Henkin z"l was, his grandson, the esteemed Rabbi Yehudah Henkin, errs in assuming that the core of my article concerns Rav Henkin's *psak*. It was only in deference to Rav Henkin z"l's greatness that I devoted as much space to it as I did. Moreover, from the very start there were objections to, and a good deal of mystification with, Rav Henkin's remarks. After his remarks were published, the very next issue of *Ha-Pardes* (חוברת א' שנה ל') contains a long response to Rav Henkin written by Rav Shalom Y.S. Rubin-Halberstam (אדומ"ר מציעשנוב), a great *posek* in his own right, in which he argues vehemently against the conclusion of Rav Henkin. He marshals a host of halachic objections to the *psak*. He writes that "במחכ"ת זהו שום ראייה מש"ס ופוסקים" ר.ק סברא בלי.

Furthermore, he states that Rav Henkin never gave a firm affirmative *psak*. He merely said – "אפשר שאין קפידה" – to which Rav Halberstam says that even though it is a tentative decision, "the climate today is that assimilationists and the progressives who want to bring about equality between men and women in the religious arena – for them this will serve as a *definitive decision* [my own italics] from Rav Henkin."

The Manchester *dayan* in his *Minchat Yitzchak* (volume 4 no. 30) also expresses his great surprise at Rav Henkin's *psak*. He writes that as others, "גם בעניין יפלא," and proceeds to argue against the *psak*. In the work *Penei Baruch*, the book on the laws of mourning, which has gained great popularity and acceptance, the author writes that even though there is a discussion in the *Poskim* about a girl saying kaddish....."אבל כל הפסיקים חולקים על זה וכובתו שאין לה לומר קדרישון" (page 260.) Even the *Tzitz Eliezer* (Volume 14:7) dismisses the possibility of women's reciting kaddish. He does not even cite the decision of Rav Henkin. It would seem to the reasonable scholar that the

decision of Rav Henkin was unacceptable to and rejected by his contemporaries.

Interestingly, *all* of the aforementioned *poskim* include a warning for the future. They predict negative developments if this matter is resolved in favor of women saying kaddish.

The remainder of Rabbi Yehudah Henkin's quotes have already been noted and cited in my piece and there is little reason to repeat them. The other remarks have nothing to do with my article. The notable exception is what I perceive to be an historical error on his part.

It is simply not true that the recitation of kaddish in unison by groups of mourners began among the Ashkenazic Jews in late nineteenth century. As early as 1831 R. Moshe Sofer (*Chatam Sofer, Teshuvot, Yoreh De'ah* 345), writing to the Jewish court of Eibeschutz, tells of the custom in Frankfurt where *Kaddish d'Rabbanon* was recited by all of the mourners in unison. In the same year we have a record from the Jewish community in Posen where a cholera epidemic gave rise to many mourners. Rabbi Akiva Eiger instituted that all the mourners would recite every kaddish in unison. In the next year he instituted that one kaddish during *Shacharit* be left for all the mourners to recite together (התקנות בישראל, ישראל שציפינסקי, ברך רביעי דף רג).

Additionally, Rabbi Shlomo Ganzfried, a rav in Hungary, discusses in his *Kitzur Shulchan Aruch* (published in Lemberg in 1847) a longstanding custom in *many* *Kehillot* that if there were many mourners, the kaddish was recited by the group (סימן בוטשעיף). It seems that the rules of precedence and the lottery system mentioned by the *Magen Avraham* (*Orach Chaim* #135) to decide which individual would say the kaddish was used only when the number of mourners permitted an equitable distribution of the kaddish. However, if there were many mourners and the lottery system would not allow for all the mourners to have a reasonable amount

of *kaddishim* – the system of group recitation was instituted. שערם מצוינים בהלכה דף קמב' ס"ק ז (ו) See Rav Shlomo Braun in his *פרק ד ה"א* (Yerushalmi in *Taanit*) as the source for the group recitation of kaddish.

There is a second matter brought up by both writers that does indeed warrant further discussion. That is the notion that a dichotomy between Jewish law/customs and "public policy" exists. If I had to speculate as to what the writers mean by public policy, I would assume that they refer to a situation where there are two legitimate halachic approaches to a particular matter. In such a case, "public policy" is the ultimate decision as to which of the two halachic approaches should be implemented. My questions would be, "How are these decisions arrived at? Who makes those decisions?"

Let us take the matter at hand as an example. We are dealing with a halacha which could be classified as the application of a *minhag Yisrael*, i.e. mourners reciting kaddish for a deceased relative. What has the custom been until now? Clearly up until forty years ago women did not recite it! Certainly, as Rabbi Wolowelsky has cited, there were instances where girls did recite the kaddish. However, I believe that we can all agree it was not the mainstream practice then, just as it is not the mainstream practice today! All of the great rabbis of today, who could correctly be seen as the disciples of Rav Chaim Ozer and the Chafetz Chaim (the two rabbis Rabbi Wolowelsky cites as the sources of the recollections of Rabbi Maaruch of the Mir) and the Jews who follow their decisions, clearly do not follow this practice. The vast majority of *poskim* cited in my article go along with the accepted practice of women not saying kaddish. This might be for any number of reasons. Even in the instances cited by Rabbi Wolowelsky, we do not know many details that are critical. No *posek* has ever allowed a married woman to recite the kaddish. Were any of these women married? No *posek* allows women to recite the kaddish if

there are brothers reciting the kaddish. Did these women have brothers? Did the women say kaddish alone or were their voices inaudible, drowned out by the men saying kaddish? Did these women have no means by which to hire a person to say the kaddish, hence being permitted to say it themselves? Were these times of war and destruction so that some allowances were made by the decisors that we are not privy to, that would preclude these same rabbis from making the same allowances today? Was the prevailing atmosphere of today, namely an attack against the Torah's value system and how it sees the woman's role in Jewish life, a factor in the decision-making of the Chafetz Chaim and Rav Chaim Ozer? These are questions that must first be answered before "public policy" decisions can be made. (The question of who has the right to make these policy decisions is a matter that we will not get into because of space constraints.)

It is interesting that Rav J.B. Soloveitchik is quoted as being very permissive in the area of women reciting the kaddish.

Interestingly enough, he is cited by many as the source for women's *hakafot* on *Simchat Torah* and other innovations in the area of women's changing role in public life. Rav Hershel Schachter in his article "צאי לך בעקביו הצעיר" (*Bait Yitzchak* vol. XVII 5745, p.127) cites the opinion of Rav Soloveitchik as being one against changing the accepted Jewish customs. He avows the need to "fulfill the responsibility placed upon us to continue and perpetuate the traditions of our fathers and forebears in our safeguarding the customs of Israel." R. Schachter also cites Rav Soloveitchik as saying, quoting his father Rav Moshe (p.129), that changing a *minhag* is no trivial matter (see *Shach Yoreh Deah* 1:1). But the changing of a *minhag ha-tzibbur* is also a violation of "separating oneself from the community," which is listed by the Rambam as grounds for excision.

Moreover, in the latest issue of *Bait Yitzchak*, (vol. XXVIII, page 23), Rabbi Schachter writes that when Rav Soloveitchik was already quite weak and couldn't walk without assistance, the rabbi accompanying him asked him about women's *hakafot* that he had heard were sanctioned by Rav Soloveitchik. Immediately the Rav's body stiffened and, waxing strong enough to stand without assistance, he declared that the rabbi who quoted his supposed *heter* in the matter instituted women's *hakafot* without asking. It was only after the holiday that the rabbi came to the him to ask about his innovation, whereupon the Rav declared that, "it is against our entire tradition!"

In summary, I stand by my article and the conclusions drawn. It is my hope that we come to that great day of which the prophets predict, והקדישו את קדוש יעקב ואת אלקי ישראל עיריכו.