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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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Veal: The Other White Meat?

Rabbi Ezra Schwartz & Rabbi Joshua Flug

Since the beginning of the animal rights movement, much attention has been focused on the way calves are raised. By and large, the concerns raised by animal rights activists have not deterred the American public, including the kosher consumer, from eating veal (calf meat). Even so, the attention brought to the way calves are raised brings to light some serious halachic issues. This article will examine the relevant halachic issues, including a recent revelation regarding what calves are fed, which calls the kashrut of veal into question.

The activities of the veal industry have for some time been the object of intense scrutiny and criticism. Animal rights activists accuse the veal industry of barbaric practices in which calves are subjected to horrendous conditions and consequently suffer from malnutrition. These activists maintain that as a result of this mistreatment, calves are unusually infirm and are afflicted with many serious ailments.¹ The veal industry vehemently denies these charges.²

However, Rabbi Moshe Feinstein took these charges

1. Amy Blount Anchor, *Animal Rights: A Beginner's Guide*, Yellow Springs, Ohio, 1996, pg. 86.

2. American Veal Association, *The American Veal Industry: Facts About the Care and Feeding of Calves* at www.vealfarm.com.

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seriously. In a responsum (*teshuva*) written in 1982, Rav Moshe addresses the issue of *tza'ar ba'alei chaim* in the treatment of calves and concludes that although one would be forbidden to raise veal using current methods, nevertheless the violation of *tza'ar ba'alei chaim* does not render veal non-kosher.³

However, the infirmity of the veal calves is a more serious problem. Rav Moshe Feinstein cautioned that the unusually high ratio of *treifot* in slaughtered calves, presumably the result of the poor conditions in which they are raised, precludes the consumption of veal unless the entire intestinal tract (*b'nei mei'ayim*) is scrupulously checked to ensure that there are no *treifot*. Even if this difficult procedure is undertaken, Rav Moshe recommended that a *ba'al nefesh* (a person who is scrupulous in religious observance) refrain from the consumption of veal due to the concern for *treifot*.⁴

Despite Rav Moshe's position, common practice in the Orthodox community is that veal is consumed, even by *ba'alei nefesh*, although all the innards are not checked for *treifot* as per Rav Moshe's specifications. The justification for this practice is that research done by kashrut organizations subsequent to the writing of the *teshuva* has shown that, although there is an extraordinarily high percentage of *treifot* in the lungs of calves, there is no higher incidence of *treifot* in the *b'nei mei'ayim* of calves than in mature cows.⁵ Therefore, even Jews who abide by the most exacting standards of halacha consume veal, relying on the fact that the lungs were adequately examined and no *treifot* were found in the veal sold as kosher.

3. *Iggerot Moshe, Even HaEzer* IV, no.92.

4. *Ibid.*

5. Rabbi Aaron Teitelbaum, the Nirbater Rav, posits that although these were the facts presented to Rav Moshe in 1982, in 2002 there is no higher incidence of *treifot* in *bnei mei'ayim* of veal than in other animals.

Recently, however, another issue has come to light that should give the kosher consumer pause before indulging in veal. Calves are not fed milk but are nourished instead with a uniform diet consisting of a specially-derived formula intended to produce the whitish color, taste, and texture prized in veal. These calves do not eat any grains and their sole sustenance comes from the formula.⁶ As Kashrut organizations have recently learned, although the composition of the feed varies between companies, the formula typically contains 15-22% fat, which can consist of lard, tallow (beef fat), or a combination of both, and coconut oil. The fat is cooked with various milk products as well as vegetable protein, vitamins and minerals to make the formula.⁷

In effect then, calves are raised on a non-kosher formula. The focus of the present study will be to explore possible halachic issues arising from this practice.

The Gemara in *Avoda Zara* (49a) writes that an animal fattened (*behaima she'nitpatma*) with foods that were worshipped as *avoda zara*, is forbidden to be eaten. The Ramo (*Yoreh De'ah* 60:1) expands this halacha and forbids eating animals that were fattened for their entire lives with prohibited food. However, if the animal was fattened by both kosher and non-kosher food, the Ramo permits its consumption. Calves subsist entirely on formula; they eat no supplemental food. This poses a problem for the kashrut of formula-fed veal, for lard is derived from a non-kosher animal and the tallow found in the formula is derived from cattle that were not slaughtered in a manner approved by halacha. Moreover, the combination of the milk and the tallow renders the formula *basar b'chalav*, which is not

6. See Cozzi, et al., "The provision of solid feeds to veal calves: Growth performance, forestomach development, and carcass and meat quality," *Journal of Animal Science*, February 2002, pages 357-366.

7. U.S. Patent no. 6,348,222 (issued February 19, 2002).

only prohibited to consume (*assur b'achila*), but also prohibited from benefit (*assur b'hana'ah*).⁸

This would seem to indicate that veal raised exclusively on formula (which is the case for all calves slaughtered in kosher abattoirs in America) may not be eaten, since the animals were nurtured only by non-kosher feed.

Nevertheless, there are three possible reasons for leniency. The first involves the scope of the *issur* of *behaima she'nitpatma*, an animal fattened from prohibited foods. As we shall see, perhaps not all foods are included in this prohibition. Second, there is room to be lenient because of the principle *zeh v'zeh gorem*. As we will explain later, when there are two distinct factors, one permitted and the other forbidden, that contribute to produce a single result, that result is permitted. Since the formula fed to calves contains some kosher ingredients in addition to the non-kosher ones, it may therefore be permitted. Last, there are grounds for leniency based on the principle of *issur she'nishtane*, a prohibited food item that becomes permitted after undergoing a change.

The Parameters of *Behaima She'nitpatma*⁹

The most common argument presented by *poskim* to be lenient with *behaima she'nitpatma* is to limit the scope of the prohibition. The *Shach* (Y.D. 60:5) notes that the Ramo's *p'sak* is a significant extension of the principle outlined in *Masechet*

8. Lard cooked with milk does not create *basar B'chalav*; see *Y.D.* 87:3.

9. It is worth analyzing whether *beheimah she'nitpatma* is a biblical or rabbinic prohibition. See *Teshuvot Har Tzvi, Yoreh De'ah*, no.53, who raises this question. A number of authorities clearly assume that it is a rabbinic prohibition. See *Chadrei De'ah, Yoreh De'ah*, 60. See also *Darchei Teshuva*, 60:15.

Avoda Zara. The Gemara forbids only an animal whose diet consists exclusively of *avoda zara*. The Ramo expands this and forbids animals that were fattened by any type of non-kosher food, based on a text in *Temura* (31a). The Gemara there cites the opinion of Rabbi Chanina ben Antignos that a kosher animal that nursed from a non-kosher animal is invalidated from sacrifice on the *mizbe'ach* (temple altar). In the Gemara's case the animal nursed every morning from a non-kosher animal. Presumably, however, the animal consumed kosher foods at other times. Even so, the Gemara prohibits offering the animal on the *mizbe'ach*. Tosafot (ad loc, s.v. *sheyonka*) are uncertain (*l'fum rihata mashma*) whether such an animal is disqualified only from sacrifice on the *mizbe'ach*, or if it is also ineligible for human consumption. In extending the prohibition to an animal primarily fed any type of prohibited food, the Ramo raises the doubt of Tosafot to the level of certainty, and prohibits the consumption of that animal.¹⁰

Moreover, the *Shach* notes that Tosafot introduced their doubt as to whether Rabbi Chanina ben Antignos' halacha applies to human consumption, by giving the example of an animal that ate *avoda zara* grains.¹¹ The *Shach* interprets Tosafot to mean that only with *avoda zara* and other *issurei hana'ah* (food whose benefit is also proscribed) is there the possibility

10. See the Ramo's comments in *Darchei Moshe, Yoreh De'ah*, 60:1, and in *Torat Chatat* 65:10. The *Shach* (60:5), however, clearly writes that Tosafot were in doubt. See also *Piskei Tosafot, Temura* no.20, who rules that the animal is kosher for human consumption.

11. This is only one of three answers given by the *Shach* to understand why the Ramo would cite Tosafot as normative in light of the fact that the Mordechai (*Yevamot*, no. 66) and the *Issur V'heter* (47:9) are both lenient. This reason is accepted by later *Acharonim* as the position of *Shach*. See *Pri Megadim* (60:5), *Pri Chadash* (60:5), *Minchat Ya'akov* (65:17) and *Zer Zahav* (47:4). *Chochmat Adam* (26:14) writes that the halacha follows the *Shach*, not Ramo.

that regular feeding would render the animal non-kosher.¹² The halacha posited by Rabbi Chanina ben Antignos was never understood to prohibit the consumption of an animal that ingested ordinary *issurei achila*. According to the *Shach*, Rabbi Chanina ben Antignos would not allow an animal that regularly ingested *issurei achila* to be sacrificed on the *mizbeach*, but he would not forbid human consumption of the animal.

12. Rabbi Hershel Schachter (*B'Ikvei haTzon*, no. 27, note 9), explains that the reasoning of the *Shach* is based on the Gemara, (*Pesachim* 26a). The Gemara there develops the concept of *yeish sh'vach eitzim b'pat*, when bread is baked with firewood that is *assur*, the bread itself becomes forbidden. Tosafot (ad loc s.v. *chadash*), write that this concept applies only to *issurei hana'ah* and not to *issurei achila*. Rabbi Schachter explains that by eating the bread baked with *issurei hana'ah* one is indirectly benefiting from the prohibited firewood. (See Rabbi Yehuda Assoud, *Yehuda Ya'aleh, Orach Chaim*, no.127, for a similar analysis, although his conclusion differs from Rabbi Schachter's.) Although the benefit is somewhat indirect, as long as it is not completely indirect, one is considered to be benefiting from *issurei hana'ah*. Similarly, if an animal ingests *issurei hana'ah*, one who eats this animal is benefiting from *issurei hana'ah*, albeit indirectly. It must be noted that this is a "normal" form of indirect benefit which would not be permitted because of the principle of *shelo k'derech hana'ato*.

We must note that even if one is stringent and prohibits eating veal out of concern for *behaima she'nitpatma* there is still room to be lenient on food cooked in a utensil that was used to cook veal within the last twenty-four hours. A utensil used to cook non-kosher food absorbs some of the taste of the non-kosher food and imparts this taste to the next food cooked in the utensil. That second food is normally prohibited, based on the principle of *ta'am k'ikar*, taste infused into a food is prohibited as much as its origin. However, Rabbi Schachter (*B'Ikvei haTzon*, no. 26), writes that *ta'am k'ikar* applies only to items which are intrinsically prohibited (*issurei cheftza*). Items that are not intrinsically prohibited (*issurei gavra*), are not subject to the principle of *ta'am k'ikar*. In the case of the veal, it would seem that the prohibition to eat veal is not intrinsic. Rather, one who eats veal is in violation of benefiting from the *issurei hana'ah* originally eaten by the calf.

The *Shach*'s leniency will probably not help us in the case of calves that fed upon *basar b'chalav*, a forbidden mixture of meat and milk. Ordinarily, *basar b'chalav* falls into the category of *issurei hana'ah*.¹³ Even so, there may be grounds for leniency. Rabbi Yehezkel Landau, the *Noda B'Yehuda*, in his commentary *Dagul Merivava* to *Shulchan Aruch*, cites the commentary of the Rambam to the Mishnah in *Keritut* (3:4). The Rambam posits what he terms a *nekuda nifla'ah*, an amazing point. The Rambam suggests that *b'sar neveila*, meat that did not undergo the necessary ritual slaughter, when cooked with milk, is not *assur b'hana'ah*. According to the Rambam, although ordinarily a more inclusive prohibition can be compounded upon a less inclusive prohibition, the prohibition of *basar b'chalav* is not compounded upon the *issur* of *neveila*. Therefore, this mixture is treated as ordinary *issurei achila* and does not have the *issurei hana'ah* status of *basar b'chalav*. In the case of the formula fed to calves, the tallow that is cooked together with whey comes from non-kosher animals. Therefore, the *Shach*'s leniency can still be employed.

However, it must be noted that both the *Dagul Merivava* and the *Shach* are not universally accepted. Halachic authorities¹⁴ have been reluctant to rely upon this leniency for various reasons. First, there are numerous *Rishonim*¹⁵ who do not subscribe to the proposition that a meat-and-milk mixture, where the meat is derived from a non-kosher source, may be benefited from. Second, the *P'ri Megadim* (Introduction to the Laws of *Basar b'Chalav*), rejects the opinion of *Dagul Merivava*; *Chatam Sofer* (*Yoreh De'ah* no. 92) is also reluctant to rely on this

13. *Yoreh De'ah* 87:1.

14. See Rabbi Menachem Genack, *Gan Shoshanim* (vol. 1, no.16); and *Badei HaShulchan* 87:25.

15. Mordechai, *Avoda Zara*, 828; Rashba, *Torat HaBayit* 3:4:85a; Ramban, *Chullin* 113b.

opinion. Furthermore, although the *Chatam Sofer* assumes that this leniency applies to the milk in the mixture as well the meat, Rabbi Akiva Eger¹⁶ writes that only the meat is permitted, but the milk is *assur b'hana'ah*. According to Rav Akiva Eger, the *Dagul Merivava*'s leniency would not apply, since milk is an integral part of the formula fed to veal.

Moreover, the Vilna Gaon (Gra) disagrees with the *Shach* entirely. In his commentary to *Shulchan Aruch*, the Gra cites a *Sifrei* that supports the Ramo.¹⁷ According to the Vilna Gaon, an animal that is fattened with foods whose consumption is forbidden (*issurei achila*) is also prohibited. Indeed, there are authorities who agree with the *Shach* that *nitpatma* applies only to *issurei hana'ah*, but still refer to a *minhag* to go beyond the strict halacha and not to consume livestock that were fattened with insects and other *issurei achila*. Although the strict halacha may follow the *Shach*, the *minhag* (common practice) was to adopt the position of the Ramo.¹⁸

16. *Drush veChiddush, Ma'aracha 7 to Masechet Beitzah*.

17. See *Bi'ur HaGra*, Y.D. 60:1, who refers to *Sifrei, Parshat Re'eh*, piska 49. See also the comments of Netziv to *Sifrei, loc cit.* See *Teshuvot Maharam Schick*, O.C. no. 212, who interprets the Ramo's prohibition of animals fattened by non-kosher food in light of the Ramo's own comment elsewhere (Y.D. 81:7). There, the Ramo maintains that ingesting non-kosher foods may cause a person to have bad character traits. Likewise, in the case of an animal fed non-kosher food, even if the animal is technically kosher, one should avoid its consumption lest one develop negative character traits. See, however, *Minchat Yosef* (Y.D. 60:8:5) who questions the Maharam Schick's comparison to Y.D. 81:7.

18. See *Minchat Ya'akov*, 65:17 who agrees with the *Shach*. However in 66:2 he quotes his father that the *minhag* to refrain from eating a certain wild hen is because that particular hen feeds on non-kosher insects. *Pleiti*, 82:2 however, disagrees with the rationale given by the *Minchat Ya'akov*. See also *Darchei Teshuva* 60:13.

The majority of material regarding *nitpatma* is found in *Hilchot Pesach*. The *Acharonim* deal with the permissibility of drinking the milk of a cow that consumed *chametz* on *Pesach*.¹⁹ *Chametz*, like *basar b'chalav*, is *assur b'hana'ah*. Even so, there are authorities who permit drinking the milk of a cow that was fed *chametz* because the normal way to derive *hana'ah* from *chametz* is by ingesting the *chametz* directly, not by drinking the milk of a cow that fed upon *chametz*.²⁰ *Chametz*, like most *issurei hana'ah* is only forbidden *k'derech hana'ato*, when one derives benefit in the normal way. Therefore, there is no problem with benefiting from *chametz* by drinking animal milk, as this is not the normal way of deriving benefit from the *chametz*. However, *shelo k'derech hana'ato* will not help in the case of calves that consumed *basar b'chalav*. One is forbidden to derive benefit from *basar b'chalav* even if the benefit is derived in an atypical manner.²¹

Zeh V'zeh Gorem

The Ramo's leniency regarding an animal that was fattened by kosher and non-kosher products together emerges directly

19. See *Mishnah Berurah*, 448:33.

20. See *Pleiti*, 60:1, *Aruch HaShulchan* 60:7 and the responsum of *Nishmat Adam* at the end of *Chayyei Adam*, *Hilchot Pesach*, no.9. This approach is very questionable. The principle of *shelo k'derech hana'ato* only reduces the severity of a biblical prohibition to make it into a rabbinic prohibition, but does not serve to permit the prohibition entirely. See *Yehuda Ya'aleh* loc. cit, who raises this objection to the position of *Pleiti* and offers his own novel explanation. Perhaps we can suggest in defense of *Pleiti* that an item consumed in a slightly atypical manner is still rabbinically forbidden. However, if the prohibited item is consumed in a completely irregular matter, such as consuming prohibited items that were ingested by an animal, then it would be completely permitted.

21. See *Pitchei Teshuva*, Y.D. 87:1.

from the Gemara in *Avoda Zara* (49a), which cites a dispute among the *tannaim* whether *zeh v'zeh gorem* is permitted or prohibited. *Zeh v'zeh gorem* is the concept that when two distinct self-sufficient forces, one permitted and the other forbidden, cause a single result, that result is permitted. The case in question regards an animal that was fattened, among other things, with grains which were worshipped as *avoda zara*, thus prohibiting any benefit to be derived from these grains. Halacha follows the opinion that *zeh v'zeh gorem* is permitted.²² This implies that were there to be no source of food other than the prohibited, all would agree that the animal is forbidden. In our example, were the diet of calves to consist of this prohibited formula combined with another permitted food source such as grain, veal would unquestionably be kosher. But in reality the overwhelming majority of veal that comes to market in America nowadays subsists entirely on prohibited formula. Based on the *p'sak* of the Ramo, it would appear that veal, as it is produced in America today, should be forbidden.

There are some who maintain that veal may be permitted because of the principle *zeh v'zeh gorem*. Calves drink small amounts of water in addition to the formula that they are fed. Some maintain that the water serves as a permissible cause of the final result, and consequently veal should be permitted.²³ However, there is good reason to question this *heter* (leniency). Although water is necessary for the calf to survive, it does not play a role in fattening the animal. It is therefore questionable if water can be treated as a *zeh v'zeh gorem* factor.

Yet there may still be another reason to permit veal on the basis of *zeh v'zeh gorem*. The mixture given to calves contains other ingredients besides meat and milk, most notably coconut

22. See *Yoreh De'ah*, 142:11.

23. See Rabbi Moshe Chayyim Shmerler, *Mesorah* 15 (1998), p.74-78.

oil. These ingredients may themselves serve as a permissive factor since they aid in fattening the animal.²⁴ However, this reasoning is questionable because of the principle *chaticha na'asait neveila*.²⁵ Put simply, when a permitted food absorbs the taste of a forbidden food, it becomes prohibited not incidentally, but intrinsically. This would mean that although the other ingredients in the formula are permitted foods, once they absorb the taste of the prohibited foods, they can no longer be considered a *gorem* of *heter*. According to the author of *Shulchan Aruch*, the principle of *chaticha na'asait neveila* applies only to *basar b'chalav*. The *Ramo*, however, maintains that it applies to all prohibited foods. Therefore, according to the *Ramo* even a mixture that contains no *basar b'chalav*, only lard and coconut oil, would not be considered permissible under the rubric of *zeh v'zeh gorem*.²⁶

24. Many mixtures contain both lard and tallow. According to the *Shach* mentioned earlier, the lard could be treated as a *gorem* of *heter* since the prohibition of *beheima she'nitpatma* applies only to *issurei han'aah* and not to lard and other *issurei achila*.

25. See *Shulchan Aruch* Y.D., 92:3,4. There is a dispute whether *basar b'chalav* that infuses taste into other foods is to be treated as *chaticha na'asait neveila* of *basar b'chalav* or as *chaticha na'asait neveila* of an ordinary prohibition. See *Shach* 105:17, who rules that it is treated as an ordinary prohibition, not *basar b'chalav*. Rabbi Yosef Dov Soloveitchik zt"l explained that according to the *Shach* the *chaticha na'asait neveila* of *basar b'chalav*, and according to the *Ramo* the *chaticha na'asait neveila* of ordinary prohibitions, do not transform the permitted substance into a prohibited one. Rather, *chaticha na'asait neveila* simply modifies the amount necessary to effect *bittul*, nullification. See *Gan Shoshanim*, loc cit, and *B'Ikvei haTzon* no. 24. If so, one would be tempted to treat even an item of *chaticha na'asait neveila* as a *gorem* of *heter*.

26. The consensus of poskim is that although *chaticha na'asait neveila* of prohibited foods other than *basar b'chalav* is only a rabbinic prohibition, nevertheless, once food is prohibited because of *chaticha na'asait neveila* it can no longer be treated as *zeh v'zeh gorem*. This is

The *P'ri Chadash* (*Yoreh De'ah*, 60:5) develops a novel approach to *zeh v'zeh gorem* that in effect will permit every animal that is fattened by prohibited food. The *P'ri Chadash* maintains that to qualify as a *zeh v'zeh gorem* the two *gormim* (causes of the final result) need not serve the same purpose. This position is espoused by Rashi in *Avoda Zara* (49a s.v. *vihivrich*) who maintains that the ground is considered a *gorem* in the growth of a seed. Although *Tosafot* (ad loc s.v. *she'im hivrich*) disagree with this explanation, the *P'ri Chadash* shows that the *Rambam* (*Hilchot Ma'aser Sheni* 10:21), agrees that the two *gormim* need not fill the same role. In the case of an animal that was fattened exclusively with prohibited foods, the ultimate girth of the animal is a product of what the animal ate in addition to the animal's size at birth. In effect, the animal's size at birth is a permissible *gorem* of the end result, the fattened animal.

There are a number of problems with the *P'ri Chadash*'s explanation. First, it is not clear how the *P'ri Chadash* deals with the Gemara in *Avoda Zara*, which clearly implies that an animal fattened completely with *avoda zara* foods is prohibited. Nevertheless, the *P'ri Chadash* permits the animal.²⁷ More fundamentally, Rabbi Yona Landsofer (d.1712), *Kanfei Yonah* (Y.D. 60), counteracts the argument of the *P'ri Chadash* and reinterprets the Gemara in *Avoda Zara*. He argues that *zeh v'zeh gorem* is not applicable to an animal fattened with permitted and prohibited foods together. In the case of the animal, some of the animal's fatness is the result of the prohibited foods. The fact that there are other contributors to the animal's girth is

implied by *Teshuvot Machane Chaim*, (*Yoreh De'ah* II, no. 20) and *Da'at Torah*, (*Yoreh De'ah* 60:9). *Teshuvot She'eilat Shalom*, (II, no. 154), however, cites a number of reasons to be lenient in the case of an animal that fed upon food which absorbed taste of non-kosher foods.

27. See *P'ri To'ar* (60:4) for an explanation of the Gemara according to the *P'ri Chadash*.

immaterial. It does not matter if an animal becomes slightly chubby or morbidly obese by ingesting non-kosher food. In either case the animal is forbidden.²⁸

Issur She'nishtane

The *Issur V'heter* (47:9) presents us with a major reason to be lenient in the case of an animal that was fattened with non-kosher foods. The *Issur V'heter* permits consumption of a kosher animal that nursed from a non-kosher one, because the digested food is changed so much that it is halachically considered "burned". Apparently, the *Issur V'heter* considers the change that occurs through digestion significant enough to

28. *Kanfei Yonah* explains that the Gemara in *Avoda Zara* refers to an animal that was sustained through both kosher and non-kosher foods. In that case the animal is permitted because of *zeh v'zeh gorem*. However, when an animal becomes noticeably fatter through ingesting kosher and non-kosher foods, the animal is forbidden since some of its fatness can be attributed to the non-kosher. See also *Da'at Torah* 60:4,5 who concurs with this position. See also *Darchei Teshuva* (60:12). *Minchat Yosef* 60:8 analyzes whether we rule according to the *P'ri Chadash* or the *Kanfei Yonah*.

It should be noted that the calves are fed colostrum, secretions of a newly-lactating cow, on their first day of life. The colostrum contributes Immunoglobulin G (IgG), an important protein capable of acting as an antibody, as well as fats and other proteins. See the publication of the Bovine Alliance on Management and Nutrition, *A Guide to Colostrum And Colostrum Management For Dairy Calves*, 1994. *Teshuvot P'nei Yehoshua, Yoreh De'ah*, no.4, writes that an animal that started feeding from permitted sources and later in life switched to prohibited sources is permitted, based on *zeh v'zeh gorem*. It would be tempting to include his reasoning as further grounds for leniency, inasmuch as the calves start feeding on colostrum, which is permitted. However, it seems absurd to assume that all of the examples regarding *behaima she'nitpatma* refer to cases when the animal ate nothing other than *issur*. The colostrum plays no role in fattening the animal and should therefore not be considered as a *zeh v'zeh gorem*.

permit the consumption of an animal that digested prohibited foods. This is very similar to the principle of *issur she'nishtane*, which is cited by the *Magen Avraham* (216:3), in which a prohibited item that was significantly changed becomes permitted.

The *P'ri Megadim* (*Siftei Da'at* 60:5) adopts the approach of the *Issur V'heter*. However, he elaborates on the *Issur V'heter*'s position and distinguishes between two types of *issurei hana'ah*. The Mishnah in *Temura* (33b) tells us that there are *issurei hana'ah* which must be burned (*nisrafim*) and *issurei hana'ah* which may be disposed of through burial (*nikbarim*). The halacha is that the ashes of *nisrafim* (prohibitions which must be destroyed by fire) are permitted; however, the ashes of *nikbarim* (prohibitions that may be simply disposed of) are forbidden.²⁹ *P'ri Megadim* argues that it should be permitted to eat an animal which consumed *nisrafim*, since the prohibited item was burned through digestion and consequently became permitted. However, an animal that ate *nikbarim* would be forbidden, since the prohibited item was not properly destroyed. According to the analysis of the *P'ri Megadim*, calves that fed upon *basar b'chalav* would be forbidden. *Basar b'chalav* need not be destroyed through burning; it is in the category of *nikbarim*.³⁰ Therefore, the ashes of *basar b'chalav* would still be forbidden, and it would still be forbidden to consume an animal fattened with *basar b'chalav*.

Rabbi Moshe Feinstein, however, relies upon *issur she'nishtane* to permit even an animal that was fattened with *basar b'chalav*.³¹ He shows that Ramo, who prohibits an item

29. See *Tosafot, Temura* 33b s.v.*hanisrafim*, who explain the reason for this phenomenon.

30. See *Temura* 33b.

31. In a lengthy *teshuva*, Rav Moshe shows that the majority of

fattened with non-kosher foods, follows a minority opinion, but Rav Moshe feels that one should follow the majority of *Rishonim*. Therefore, he permits consumption of an animal that was fattened with *issurei hana'ah*.³² The one exception to this is the prohibition of *avoda zara*.³³ In effect, Rav Moshe uses the principle of *issur she'nishtane* to limit the case of *beheima she'nitpatma* to the one case mentioned in the Gemara, an animal fattened with *avoda zara* foods.

Rav Moshe Feinstein is not alone in limiting the prohibition of *beheima she'nitpatma* and consequently permitting an animal fattened with a meat-and-milk mixture. Rabbi Shlomo Kluger also maintains that *issur she'nishtane* would permit any animal that is fattened with prohibited foods, other than *avoda zara*.³⁴

Rishonim permit digested non-kosher foods to be eaten. There is a minority opinion that digestion only removes *tumah*, ritual defilement, of an object but does not permit the consumption of the object.

32. *Iggerot Moshe, Orach Chaim*, I, 147. Rav Moshe also deals with the issue of *ma'arit ha'ayin* which the *Issur V'heter*, in the *hashmatot* at the end of the *sefer*, uses to prohibit the purchase of an animal fattened by non-kosher foods. According to Rav Moshe, *ma'arit ha'ayin* only applies to the case of an animal that nursed from a non-kosher animal where people may say that the apparently kosher animal is indeed the offspring of the non-kosher animal. There is no *ma'arit ha'ayin*, according to Rav Moshe, when an animal was simply fattened by non-kosher foods.

33. The Gemara derives from the *pasuk* "v'hayeeta cherem kamohu" (*Devarim* 7:26), that not only is *avoda zara* forbidden, but anything created from *avoda zara* is likewise prohibited.

34. He shows that *avoda zara*, unlike other prohibitions, can apply to any substance. It does not matter if a person worshipped grains or an animal; in either case the prohibition of *avoda zara* sets in. Therefore, the fact that the animal digested grains of *avoda zara*, and the grains were thereby changed to become part and parcel of the animal, does not in any way mitigate the *issur*. See *Tuv Ta'am V'da'at, Tinyana*, 236. The Maharit cited by *Knессет HaGedola*, Y.D. 60 also limits *beheima she'nitpatma* to the case of *avoda zara*. However, we do not know the

Conclusion

To return to our original question: Is it permissible to eat meat from an animal which was fed primarily non-kosher feed, particularly if the feed is a meat-and-milk mixture?

Many *poskim* follow the *Shach* in permitting animals fed solely on non-kosher foods (*issurei achila*). According to these *poskim*, veal coming from calves that were fattened with lard would be permitted. However, veal derived from calves fattened with *basar b'chalav*, a meat-and-milk mixture would be forbidden unless one accepts the position of the *Dagul Merivava*. Even so, there are grounds for leniency according to the authorities who permit animals that were fattened with *issurei hana'ah* (besides *avoda zara*) based on the principle of *issur she'nishtane*. Some argue that formula-fed veal should be permitted based on the principle of *zeh v'zeh gorem* since permissible ingredients are included in the feed mixture. However, others question the application of *zeh v'zeh gorem* to this situation.

Kashrut agencies are currently working to modify the feed given to veal calves. We must keep in mind however, that the Ramo and the Vilna Gaon, two major determiners of Ashkenazi normative halacha, are stringent, and forbid an animal that was fattened by any prohibited food. Even if the kashrut agencies are successful in changing the fat content in calf feed so that it contains no tallow, only lard, we will not satisfy the opinion of the Ramo and the Vilna Gaon.

Moreover, some claim that the accepted tradition has always

basis for the Maharit's limitation, as *Knesset HaGedola* does not reproduce the *teshuva*. The *Aruch HaShulchan* 60:7 writes that *beheimah she'nitpatma* only applies to *avoda zara*. However, the reason he gives is that the benefit received is *shelo k'derech hana'ato*, as mentioned by the *Pleiti*, see note 20. As we mentioned, this reason will not serve to permit an animal that consumed *basar b'chalav*. See note 21.

been to follow Ramo and forbid animals fattened by prohibited foods. Only if kashrut agencies successfully modify the veal feed so that it contains no non-kosher ingredients will veal be kosher according to all opinions. A kosher formula is now available but is currently used by very few producers of kosher veal.³⁵ Hopefully, all kashrut agencies will soon insist upon use of this kosher formula.³⁶

Our intention in writing this paper is clearly not to decide a matter of halacha. Rather we want to clarify a difficult halachic issue, so that the reader can be well informed of the issues. It must be kept in mind that this presentation is based on the information that we have regarding calves at the time this article was written, November 2002, and this information is subject to change. Moreover, industry leaders are very competitive and do not readily reveal the recipe for their formula. It is the responsibility of the kosher consumer to stay in touch with kashrut agencies and monitor any change in this issue.

35. U.S. Patent no. 6,348,222 (issued February 19, 2002), describes in detail the content of all veal feed currently available. This patent, "Milk replacer without animal fat, for feeding veal calves" is the first of its kind to contain no animal fat at all. The primary reason given for the development of milk replacer without animal fat is to enhance marketability of the meat as kosher. Such formula is currently used to feed calves and has limited availability on the kosher market.

36. There may be additional reasons to be lenient with utensils used to cook veal. See note 12.

Jaundice and Brit Milah: A Halachic Response to Modern Medicine

Avi Oppenheimer

Neonatal jaundice is a common condition of the newborn. Although often the result of a normal, physiologic process, jaundice is a serious issue regarding the performance of the *brit milah*. Medical advances of the last thirty years have provided doctors and *mohelim* with a completely new comprehension of this age-old condition, as well as new methods for quantifying the health hazard it might pose to the neonate. In light of contemporary medical knowledge, it behooves us to ask: what new guidelines should be adopted, if any, when contemplating circumcision of a newborn with jaundice?

Talmudic Sources

The Tosefta¹ rules that if three consecutive children from the same mother die as a result of the *milah*, a presumption of danger has been established and the fourth baby should not be circumcised. The Talmud (*Yevamot* 64b) explains that there are families whose blood is thin (which poses a threat to circumcision) and there are families whose blood is thick (which

1. Tosefta *Shabbat* 16:5

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is normal).² The Tosefta continues to relate a story of a woman whose first two sons died after circumcision. She brought her third son before Rabbi Natan, who, upon examination of the baby, declared that his hue was “*yarok*”.³ Rabbi Natan observed that the baby lacked the blood of circumcision, “*lo matzati bo dam brit*”.⁴ He advised the mother to postpone the circumcision “*ad she'yikanes bo dam*” until the blood enters the baby’s body. The Tosefta records that they waited, and indeed the baby survived the circumcision.

The same story of Rabbi Natan is recounted in the *Yerushalmi* with two important differences.⁵ First, the Talmud makes no mention of the baby’s color. Rabbi Natan is simply recorded as observing “I saw that the baby lacked the blood [necessary for] circumcision.” Second, it is the fourth baby that was brought to Rabbi Natan, not the third (as recorded in the Tosefta).

Another version of Rabbi Natan’s story appears in the (Babylonian) Gemara in *Shabbat* 134a. Here, the Talmud relates that Rabbi Natan examined a baby with a ruddy hue. Rabbi Natan recommended the circumcision be delayed until “the baby’s blood is absorbed into his flesh.” This stands in contrast

2. This appears to be a reference to the blood’s clotting ability-hereditary hemophilia.

3. The color referred to as “*yarok*” by the Talmud can have multiple meanings which will be discussed later.

4. *Piskei Rid*, *Shabbat* 134a, explains that Rabbi Natan hesitated in performing the *milah* because the baby’s blood has yet to spread out from his heart to his limbs. Therefore, Rid explains, even if they would circumcise him “*lo haya yotzi mimenu dam brit*” (the circumcision would lack blood). This appears to be an explanation of Rabbi Natan’s statement “*lo matzati bo dam brit*.” Importantly, this implies that a proper circumcision requires bleeding. See *Iggerot Moshe* (Y.D. 2:119) regarding the Gomco clamp and bloodless circumcision.

5. *Yevamot* 6:6.

to previous references regarding a yellow baby and a postponement resulting from a lack of the blood necessary for circumcision.

Defining *Yarok*

In order to apply this halacha of the *yarok* baby to practical, modern-day circumstances, it is necessary to precisely define the medical conditions included in this category. The first difficulty exists in defining *yarok*. This color appears in connection with a number of other areas of halacha, including lung inspection (*hilchot treifot*), menstrual blood (*hilchot niddah*), and non-kosher animal milk. *Yarok* used in these contexts has various meanings: 1. green (as it is used in modern Hebrew) 2. yellow / gold (*tzahov*) 3. blue 4. cream / off-white.

Migdal Oz and *Chochmat Adam* include all colors (yellow, green, and blue) in the category of the *yarok* baby.⁶ Other *poskim*, including *Beit Yitzchak*,⁷ *Sefer Brit To'ar*,⁸ and *Mahari Asad*⁹ interpret *yarok* in this context exclusively as either green or yellow. Still other *Rishonim* interpret the condition as a

6. *Migdal Oz, Hilchot Milah*, note 17; *Chochmat Adam*, klal 149; *Pitchei T'shuva* Y.D. 263:1 citing the *Levushai S'rada*; *Aruch Hashulchan* Y.D. 263:1; *Responsa Minchat Yitzchak* 5:11.

7. *Beit Yitzchak*, Y.D. siman 91, note 6. He compares *yarok* within the context of *milah* to the Talmud's discussion of *yarok* regarding *treifot*. A green lung is kosher because it is a sign "she'lo nafal bo dam" (blood has not entered [the lungs]). However, we don't apply the logic of "lo nafal bo dam" to a yellow lung that is *treifah*. Similarly, since Rabbi Natan also describes the *yarok* baby as "lo nafal bo damo", it would appear that he refers specifically to a green-colored baby. *Beit Yitzchak* argues that from the comparison between *treifot* and *milah* we see that only a green-colored baby, in accordance with Rabbi Natan's ruling, should delay the circumcision.

8. Quoted by the *Rosh Efraim*, Y.D. 38:52.

9. *Teshuvot Yehuda Ya'aleh*, Y.D. siman 240.

generalized weakness without reference to any defined illness. *Ba'al Ha'itur* and *Sefer Tanya* cite Rabbi Natan as proof that a baby suffering from any pain or weakness should not be circumcised.^{10, 11}

A second issue debated by the *Rishonim* and *Acharonim* is how extensive the jaundice must be in order to postpone *milah*. Rambam writes that a baby who is found on the eighth day to be “*yarok b'yotair*” (exceedingly yellow) is not circumcised until his complexion returns to the color of other healthy babies “*ve'yachzeru mar'av k'marhe ha'ketanim ha'briyim*.”¹² Rambam also refers to a red baby for whom the *milah* is postponed as “*adom b'yotair*” (exceedingly ruddy). Other slight variations are found in the Meiri (“*adom harbey*”), *Or Zarua* (“*adom me'od*”) and *Klalei Hamilah L'Rav Yaakov Hagozer* (“*yarok t'fey*” and “*adom t'fey*”). This language implies *milah* is not postponed across the board for all jaundiced newborns. Only those babies who appear exceptionally yellow must wait to be circumcised.¹³

Shulchan Aruch (Y.D. 263:1), however, omits the term “exceedingly” and disallows *milah* unconditionally for “*katan shehu yarok*” (a baby who is yellow). *Chochmat Adam* rules in accordance with Rambam (“*yarok b'yotair*”) and questions the *Shulchan Aruch*'s change in terminology.¹⁴ However, many

10. See *Sefer Habrit, mikor u'beur halacha*, 263:2.

11. Despite the ambiguity of the term *yarok* and the uncertainty of the *yarok* baby's precise medical condition in Rabbi Natan's story, virtually all authorities who discuss jaundice include it under the heading of the *yarok* baby in Y.D. 263:1. Though disagreement exists as to the type, nature and halachic consequences of jaundice, henceforth the terms *yarok* and jaundice will be used interchangeably.

12. *Hilchot Milah* 1:17. Other *Rishonim*, including Meiri, SMA”G, Rabbeinu Yerucham, and Ravya also describe the baby as “*yarok b'yotair*.”

13. *Sefer Habrit, mekor u'beur halacha*, 263:2.

Acharonim defend the position of the *Shulchan Aruch* and rule that even a mild form of jaundice should delay the *brit*.

Rabbi Yechiel Michel Epstein, author of *Aruch HaShulam*, contends that even Rambam agrees that any level of jaundice justifies a delay of the *milah*. However, since shades of yellow and red are some people's normal complexion, Rambam describes the infant's jaundice as "*biyotair*" to indicate that the baby is **more yellow** than would be expected based on his anticipated, normal skin color. Therefore, "*yarok biyotair*" means more yellow than normal, rather than exceptionally yellow.¹⁵

Nimukei Riv presents two justifications for *Shulchan Aruch*'s omission of the term "*biyotair*". If a distinction between levels of jaundice truly exists in the eyes of halacha (with only the more intense stages of jaundice putting off the circumcision), then *Chazal* in the Gemara should have noted such an important consideration. Second, even though some *Rishonim* differentiate between different color lungs in *hilchot treifot*, ruling that only some intensities of red are kosher, it stands to reason that in an area of *sakana* (danger) we would not make such fine distinctions. Had this been the case, *mohelim* would be required to make subjective and imperfect color assessments, endangering newborns' lives.¹⁶

Nonetheless, the simple understanding of the Rambam and other *Rishonim* remains that only an intensely jaundiced baby cannot be circumcised. *Sefer Habrit* points out that the language

14. *Klal* 149:1.

15. *Y.D.* 263:2,3. See also *Rosh Efraim* *Y.D.* 38:52, who suggests a similar explanation of the Rambam.

16. *Nimukei Riv* *Y.D.* 263. *Emet L'Yaakov*, *Y.D.* *siman* 263, p.354, defends the Rambam's description of "exceedingly yellow" against *Nimukei Riv*'s contention that such terminology does not appear in the Gemara.

of other *Rishonim* “*me’od*”, “*harbey*” and “*t’fey*” do not square with *Aruch Hashulchan*’s explication of the Rambam.¹⁷

Waiting Seven Days

Shulchan Aruch (Y.D. 262:2) rules that circumcision is delayed until a sick baby is healed. If the illness was “*bechol haguf*” (systemic), then seven additional days after he is healed must be counted until the *milah* can be performed. The classic case of a sickness “*bechol haguf*” is described by the Talmud (*Shabbat* 137a) as a fever (“*chalatzato chama*”). Shmuel states that once the fever has departed, we give the baby seven complete days from the time of his recovery before circumcising him. Whether neonatal jaundice (*yarok*) is considered a *choli shebe’chol ha’guf*, requiring a seven-day waiting period, is debated by the *Rishonim*.

There are sources that indicate that *yarok* is indeed an illness. In the Midrash’s account of the *yarok* baby, Rabbi Natan quotes the Mishnah about a sick baby as support for his decision to delay the *brit*.¹⁸ Rambam writes that the circumcision is delayed for a *yarok* baby “*mipnay she’zeh cholim hu*”— because this is the manifestation of an illness. Although Rambam does not explicitly mention the need to wait seven days, the *Rosh Efraim* opines that since Rambam categorizes *yarok* as a sickness, Rambam would also require the seven day waiting period after the baby heals.¹⁹ Similarly, the *Yad Haketana* also requires a seven-day waiting period.²⁰

A second position appears in the *T’mim Deyim*, who agrees that *yarok* is a type of illness.²¹ However, Raavad posits that

17. *Likutei Halachot*, 263:2.

18. “*D’taninan taman ha’katan ha’chole ein molin oto ad she’yavri*” Midrash *Shir Hashirim Rabbah*, 7:5. See glosses of Rashash.

19. *Rosh Efraim*, *Pri T’vua*, siman 38, note 52.

20. Cited by *Rosh Efraim*, *ibid.*

chalatzato chama is the only case requiring a waiting period. A jaundiced infant, though, is circumcised as soon as his normal color returns.²² Ravya agrees that there is no official waiting period for jaundice, but writes “*yamtin lo ad she'yiroo she'ein sakana ba'davar*” – they must wait until circumcision is no longer a health hazard.²³

Acharonim also disagree whether the circumcision can be performed immediately after the baby's complexion returns to normal. Some *poskim* rule that the *brit milah* should be delayed seven days after the resolution of the jaundice.²⁴ Maharam Rothenburg explains that

the case of jaundice is no different than *chalatzato chama* where we wait until the baby heals and then we grant him seven additional days to strengthen; “*ve'chol sheken haiy'* and certainly the same applies in this case [of jaundice].²⁵

Other *Acharonim* maintain that a waiting period is

21. *Siman* 171 (authored by the Raavad).

22. Indeed *Chalatzato chama* is the only case to which the Gemara (*Shabbat* 137a) explicitly applies a seven day waiting period. See also the *Piskei Rid*, *Shabbat* 137a, who writes regarding *chalatzato chama* and the seven-day waiting period “*peirush b'choi achar keivan she'yavri malin oto miyad*” with regard to other illnesses, “once the baby heals, we circumcise him immediately,” indicating that only fever requires a waiting period after the baby heals.

23. The *Sefer Habrit*, loc. cit., further points out that Ravya also characterizes the infant as “very yellow.” Therefore, according to the Ravya it is unnecessary to wait until the yellow color completely subsides. Rather, it is sufficient to establish that “*ein sakana ba'davar*” and the *milah* can safely be performed.

24. *Responsa Maharam Mirutenberg*, *chelek* 2, *siman* 152; *Responsa Beit Yitzchak*, Y.D. *chelek* 2, *siman* 91; *Tzemach Tzedek He'chadash*, *piskei halachot*; *Responsa Yad Ha'levi*, Y.D. *siman* 141.

25. *Responsa Maharam Mirutenberg*, *ibid.*

unnecessary and the infant may be circumcised as soon as the jaundice resolves.²⁶ *Shulchan Aruch*, in discussing the *yarok* baby, makes no mention of a requirement to wait seven additional days. Furthermore, he also drops Rambam's description of infirmity – "mipnei shezh choli hu". On the other hand, *Shulchan Aruch* doesn't state that after the baby heals we circumcise him immediately (*mi'yad*).²⁷ Rabbi Y. M. Epstein agrees with those *poskim* and does not require a waiting period. He asserts that jaundice is a sign that the baby is weak, but is not an illness. Therefore, even though the color is spread across the infant's entire body ("nitpasheit bechol haguf") the *brit milah* may be performed immediately after the color fades. The *Aruch Hashulchan* elaborates:

This condition is not an infirmity at all; rather, it is a natural and normal phenomenon. We, in fact, typically see that all infants when they are born, at first have a yellow hue. This is because their blood is not absorbed immediately. Normally, it takes two or three days for this process to occur and then the body color changes [to normal]. However, this baby's blood has not been absorbed by the eighth day.²⁸

As a result of conflicting evidence about the status of *yarok*,

26. *Chochmat Adam*, *Klal* 149:4; *Maharsham*, *Da'at Torah*, Y.D. siman 38.

27. Such language is used by the *Chochmat Adam*, loc. cit., and others.

28. *Aruch Hashulchan*, Y.D. siman 263:2. As proof that jaundice reflects a natural process and not an illness, the *Aruch Hashulchan* cites Ran and Rashi who explain that *yarok* is caused by "shelo notzar bo adayin dam" – his blood has not yet [fully] developed." The *Aruch Hashulchan* further asserts that the Gemara also implies that seven additional days are not required. The midwife tells Abaye to "wait until his blood falls and then circumcise him", implying "then circumcise him" immediately. The Gemara omits any reference to an additional waiting period.

Avnei Neizer takes a more moderate approach. He maintains, in accordance with the language of Rambam and other *Rishonim* of “*yarok biyotair*”, that only intense yellow color and advanced stages of jaundice postpone the *brit milah*. In contrast, a mild form of jaundice that is only “*meshuneh k’tzat mi’mareh sha’ar ha’ketanim*” – that deviates slightly from the complexion of normal newborns, poses no impediment and we will perform the *milah* on the eighth day. Nevertheless, this mild form of jaundice is insufficient to support circumcision when the baby is recovering from the more intense form. In this case, we will delay the *milah* even longer until the yellow has totally disappeared from the body.²⁹

A final compromise opinion is advanced by Rabbi Yechezkel Landau. Although he rules that seven additional days are unnecessary, Rabbi Landau reasons “*d’mistama lo b’oto rega she’yufsak ha’admomit hitir limol oto*” – it cannot be that at the very moment the color fades it would be permitted to circumcise the baby.³⁰

Jaundice and Modern Medicine

Jaundice in the newborn is quite common affecting nearly 60-70% of term and 80% of preterm neonates during the first week of life. Jaundice is caused by the accumulation of bilirubin in the blood and its subsequent deposition in the skin and other body tissues. Bilirubin is the pigmented breakdown product of hemoglobin, a component of red blood cells. Normally, bilirubin is conjugated by the liver with another molecule to facilitate its elimination in the bile. If blood bilirubin values are elevated, a blood test is performed to determine whether the elevation is the result of a rise in unconjugated

29. Responsa *Avnei Neizer*, Y.D. siman 320, note 5.

30. Responsa *Nodah Biyehudah*, *tinyana*, siman 165.

bilirubin or conjugated bilirubin.³¹

The physiology of bilirubin removal in the neonate follows an intriguing course. As a fetus, the baby lacks the hepatic enzymes necessary for conjugating bilirubin. As a result, all bilirubin is eliminated by the mother via the placenta. In the first day after birth, the newborn is still deficient in these enzymes. In addition, neonates often have increased numbers of red blood cells [RBC] and RBC's that have a shortened life span (80 days compared with 120 days in the adult). As a result, a normal term newborn produces bilirubin at a rate nearly 2.5 times that which is found in adults. Initially, bilirubin levels remain low, and then around day two or three they begin to rise, peaking at day 3-5.³² This usually resolves by day eight, when the hepatic enzymes are fully functional.

Therefore, the initial appearance of jaundice in virtually all newborns is a completely normal, physiologic occurrence. Signs of jaundice can already be seen at bilirubin levels of 5-6 mg/dl. Clinical jaundice first becomes obvious on the face, followed by a downward progression as it increases in intensity. Once bilirubin levels are more than 15 mg/dl, it results in staining of the soles and palms.³³ Nonetheless, neither the rise in bilirubin

31. An increase in unconjugated bilirubin signifies liver damage (e.g. cirrhosis or hepatitis), since the hepatic cells are unable to properly process (conjugate) the filtered bilirubin for excretion. On the other hand, a rise in conjugated bilirubin indicates that, although the liver is functioning normally, the processed bilirubin is unable to be eliminated together with the bile into the intestine. This is typically the result of a bile duct obstruction (cholestasis). Schwoebel A, Sakraida S, Hyperbilirubinemia: "New Approaches to an Old Problem," *Journal of Perinatal & Neonatal Nursing*, Dec. 1997, 11(3):78-98.

32. Porter ML, Dennis BL. "Hyperbilirubinemia in the Term Newborn", *Amer. Family Physician*, Feb. 2002; 65(4):599-606.

33. Agarwal R, Deorari AK. "Unconjugated Bilirubin in Newborns: Current Perspective", *Indian Pediatrics*, Jan. 2002; 39(1):30-42.

itself nor its deposition in the skin pose any danger to the baby. However, an extreme elevation of bilirubin (above 20 mg / dl) allows the bilirubin to cross the blood brain barrier causing brain damage and mental retardation.³⁴ When any of these pathologic conditions are met, the infant receives medical intervention to combat the rise in bilirubin. Typically, at 15-18 mg / dl the infant receives phototherapy,³⁵ and above 20-25 mg / dl, doctors perform an exchange transfusion.

Two developments in the last ten years have spurred changes in medical science's conception of neonatal jaundice and affected doctors' management of the disease. A critical review of all available data reveals essentially no evidence of adverse affects of bilirubin on IQ, neurologic examination, or hearing in healthy full-term babies who do not have hemolytic disease. Therefore, the aggressive treatment of jaundice in healthy term babies has been questioned. These investigators conclude that such infants are not at risk of mental or physical impairment until serum bilirubin levels rise well above 20 mg / dl. They further suggest that perhaps the best medical approach for otherwise healthy full-term babies with jaundice is to do nothing.³⁶

In addition, studies have shown that bilirubin is an effective antioxidant, vying even with vitamin E in its ability to intercept

34. Ibid.

35. Light of a particular wavelength (425-475 mm) initiates a photochemical reaction converting the bilirubin into water-soluble photo-products, facilitating its excretion. These photo-products are water soluble, nontoxic, and are excreted in the intestine and urine. See "American Academy of Pediatrics, Practice Parameter: Management of Hyperbilirubinemia in the Healthy Term Newborn", *Pediatrics* 1994; 94:558-567.

36. Newman TB, Maisels MJ. "Does Hyperbilirubinemia Damage the Brain of Healthy Full-Term Infants?", *Clinics in Perinatology*; 17(2): 331-358.

and inhibit free radicals that generate hazardous peroxides. This evidence suggests that physiologically elevated bilirubin levels might actually engender a beneficial state for newborns, serving a biochemical function that provides protection from cellular damage by free radicals.³⁷ As a result of these recent findings, there has been a change in management practices of neonatal jaundice in babies in form of recognizing physiologic jaundice and initiating intervention only at even higher bilirubin levels than previously adopted.³⁸

In the absence of other indications, jaundice may be assumed to be a physiologic state provided that serum bilirubin levels do not reach drastically high levels, and that they begin to decrease by the end of the first week.³⁹ Since, at present, medical science recognizes little or no danger in physiologic jaundice, doctors routinely advise patients that circumcision may be performed on otherwise healthy infants on the eighth day without fear of endangering them. This is true even though the baby manifests clear indications of physiologic jaundice. Once reassured by their doctor's opinion, patients feel encouraged to fulfill the mitzvah in its proper time, rather than postpone until the jaundice has totally faded.

37. McDonagh AF. "Is Bilirubin Good For You?", *ibid.*, pp. 359-365.

38. Agarwal R, Deorari AK. "Unconjugated Bilirubin in Newborns: Current Perspective", *Indian Pediatrics*, Jan. 2002; 39(1):30-42.

39. Doctors today use the following yardstick to distinguish between physiologic and pathologic jaundice. Physiologic jaundice is described as a rise in unconjugated bilirubin, appearance of conditions on days 2-3 and their resolution by days 7-9. Peak bilirubin value may reach 12-17 mg/dl and increase less than 5 mg/dl/day. Pathologic jaundice is characterized by the appearance of jaundice in the first 24 hours of life, peak values (unconjugated bilirubin) greater than 17 mg/dl or an increase of more than 5 mg/dl/day, and conjugated bilirubin levels exceeding 1 mg/dl. Dennery PA et al, "Neonatal Hyperbilirubinemia", *New England Journal of Medicine*, 2001; 344:581-90.

Accordingly, modern medical knowledge may stand at odds with halacha regarding the performance of the circumcision. Moreover, how do we integrate past halachic rulings that may have been predicated on a different set of medical assumptions in a modern setting? Contemporary *poskim* dealing with these issues navigate a narrow strait. We cannot endanger a child; on the other hand, we do not unnecessarily delay the *brit*.

Contemporary *Poskim*

Two basic approaches to this dilemma are presented by contemporary halachic authorities. One position rejects medical advice and requires the postponement of the *milah* in all possible circumstances which appear in *Chazal* and the *Rishonim*. Consequently, any degree of jaundice (both physiologic and pathologic) will require a delay of the circumcision until the baby's complexion returns to normal. This approach is founded on two guiding principles.⁴⁰ First, Rambam, in context of the *yarok* baby, establishes that "one should be exceedingly careful about these matters. It is forbidden to circumcise a baby in whom there is a suspicion of illness since danger to life is without exception cause to delay the *brit*, because the *milah* may always be performed later. However, we are incapable of restoring a Jewish soul."

The second point relates to Jewish law's general disregard of the modern medical viewpoint when it contradicts *Chazal* in matters of danger. Matters which the Talmud regards as life threatening must be considered in that light even if contemporary science fails to recognize the potential danger.⁴¹

40. Dr. Avraham Steinberg, *Sefer Assia*, vol. 4, p.217.

41. Therefore, *poskim* rule that one is permitted to desecrate the Sabbath in order to help a patient deemed by halacha as having a

Some argue that a dispute between the Sages and medical science on matters of *sakana* (danger) should at a minimum constitute a state of doubt (*safek*). Thus, even a doubtful danger delays the circumcision.

This position is espoused by Rabbi Y. Y. Weisz and Rabbi Y. Sh. Elyashiv.⁴² *Minchat Yitzchak* maintains that a newborn with systemic infirmity is not circumcised and the full seven-day waiting period is necessary even if that illness poses no danger to the infant's life (*choleh she'ein bo sakana*).⁴³ The danger to which the Talmud refers relates to the performance of the circumcision and not to the illness itself. As such, even physiologic jaundice was included in *Chazal*'s injunction against circumcising a *yarok* baby. In conclusion, Rabbi Weisz rules that we should delay the *milah* even in a mild case of jaundice despite the physician's assertion that no danger exists. Furthermore, in all circumstances of clinical jaundice, seven days must be waited before performing the circumcision.

Rabbi J. D. Bleich offers two insights as to why Jewish law adopts this static approach to medical advances and scientific discovery on matters of physical danger. First, just as it is possible that *Chazal*'s viewpoint was predicated on inaccurate

life-threatening ailment, even if doctors assert that no danger exists. (*Bach*, O.C. 328:4 "u'mihu kasheh"). Similarly, Jewish law forbids eating fish together with meat, declaring that such a combination poses a health hazard. This custom remains in effect today, despite the prevailing medical opinion to the contrary. For a comprehensive discussion on this topic see N. Gutal, *Sefer Hishtanut haTeva'im*, Machon Yachdav, Jerusalem, 5755; A. Steinberg, *Encyclopedia Hilchatit Refu'it*, V. 2, s.v., *Hishtanut haTeva'im*; Rabbi Dovid Cohen, "Shinui Hateva: An Analysis of the Halachic Process," *Journal of Halacha and Contemporary Society*, Spring 1996; 31:38-61.

42. *Minchat Yitzchak*, chelek 3, siman 145; *Nishmat Avraham*, vol. 5, p.84.

43. *Minchat Yitzchak*, ibid., note 7, based on *Teshuvot Shevet Sofer*.

medical assumptions or that “nature has changed”, it is also possible that “the Sages may have been privy to information not available to physicians of subsequent ages” and that at some future time the medical community may once again embrace *Chazal*’s perspective. Second, “there does exist a distinct possibility that the jaundice is, in fact, the effect of a liver or other disorder and is misdiagnosed as physiologic jaundice.”⁴⁴

The other position conforms to modern medicine’s understanding of jaundice, granting the physician total authority in determining whether circumcision can be performed. If the newborn presents with physiologic jaundice, then with the doctor’s consent, the baby may be circumcised even while the baby appears yellow. This position is attributed to Rabbi Y. Asad who writes regarding jaundice, “Nevertheless it is best to consult a physician in similar matters and one may rely upon him when determining whether to circumcise or not to circumcise.”⁴⁵ This statement implies that since the issue is one of the newborn’s health, it is subject to the considerations of an authoritative medical opinion.

Dr. Avraham Steinberg defends this position against the contentions of the other camp. He contends that Rambam’s axiom is not breached under these circumstances, once doctors discern that no “suspicion of illness” or “danger to life” exists. Moreover, Jewish law dismisses the postulates of medical science only when the Sages have explicitly designated a circumstance as life threatening. Dr. Steinberg contends, however, that no such clarity exists in the case of the *yarok* baby. From both a practical and halachic perspective many ambiguities emerge from the case of Rabbi Natan. As outlined

44. *Contemporary Halakhic Problems*, vol. 2, pp.233-41; *Teshuvot Mahari Shtefi*, no. 52.

45. *Teshuvot Yehuda Ya’aleh*, Y.D. siman 240.

earlier, both *Rishonim* and *Acharonim* debate how to define *yarok* in this context. Indeed, according to some, *yarok* may only refer to a green skin disorder or may not refer to any defined illness at all, but a generalized state of weakness. The fact that many *poskim* simply include a rainbow of possible colors in the *yarok* category illustrates the ambiguous task of ascertaining *Chazal*'s exact intentions.⁴⁶ Furthermore, even if we adopt the position that *yarok* refers specifically to neonatal jaundice, a dispute exists whether only intense jaundice delays the circumcision or even the mild form. The emphasis on the requirement of "exceedingly yellow" suggests a halachic distinction between physiologic and pathologic jaundice. If a baby presents with exceedingly elevated bilirubin (a pathologic state), he is classified as a *choleh* and the circumcision is postponed until his complexion returns to normal. Alternatively, physiologic jaundice that is prevalent among newborns is not, according to some, cause to delay the *brit*.

Rabbi S. Z. Auerbach is reported by Dr. A. Abraham also to endorse this position.⁴⁷ He suggests that perhaps *Chazal* and *Shulchan Aruch* refer only to pathologic jaundice. Therefore, Rabbi Auerbach rules that if a competent doctor establishes that the baby is completely healthy and the jaundice is physiologic, we may circumcise the child even as the jaundice is manifest. Dr. A. Abraham relates that Rabbi Auerbach once permitted a circumcision on a baby whose bilirubin had peaked at 19 mg/dl and receded to 13 mg/dl by day eight. In another incident, Rabbi Auerbach relied on a physician's evaluation of a baby to permit the circumcision when both the *mohel* and the baby's father observed the baby to be jaundiced.

However, if the bilirubin count reaches 18 mg/dl, Rabbi

46. *Sefer Assia*, vol. 4, pages 217, 222.

47. *Nishmat Avraham*, vol. 5, pp. 84-5.

Auerbach and Rabbi Neuwirth, based on medical opinion, consider the baby infirmed, thus delaying the *brit* and requiring a seven-day waiting period.⁴⁸ It is unclear however, from what point the seven days begin. Although Rabbi Neuwirth opines that the period starts once the bilirubin level drops below 18 mg/dl, Rabbi Auerbach wonders how 18 mg/dl would indicate a systemic illness and then immediately, once the level drops below 18, the baby is considered healed (such that we would begin the count). He suggests that perhaps the seven days should commence only once the bilirubin value reaches a more moderate 12 mg/dl. Dr. Abraham reports the common practice among many *mohelim* is to perform the *milah* as long as the bilirubin count is below 12 mg/dl.⁴⁹

Rabbi Waldenberg suggests a moderate approach.⁵⁰ He maintains that both forms of jaundice, physiologic and pathologic, cause a delay of the *milah*. He bases this on the language of some *Rishonim* that point in this direction. The Meiri attributes the cause of jaundice to “*ve’ein bo dam adayin kol kach mevushal*” (the baby’s blood hasn’t completely developed). Similarly, *Sefer Zichron Brit L’rishonim* explains “*mishum d’lo nigmar adayin kol tzorcho*” ([the blood] is not yet totally finished). Rabbi Waldenberg maintains that since these *Rishonim* attribute jaundice to underdeveloped blood, therefore any level of jaundice produced by a blood deficiency postpones the circumcision.⁵¹ He further argues that in Jewish law science does not have the credibility to overrule *Chazal* on matters of *sakanat nefashot* (danger to life).

Nevertheless, the *Tzitz Eliezer* does not entirely reject medical

48. *Nishmat Avraham*, vol. 4, pp. 118-20.

49. Ibid. See also *Sefer Assia*, vol. 4, page 223.

50. *Responsa Tzitz Eliezer*, chelek 13, simanim 81-83.

51. See also *Aruch Hashulchan* above in reference to Rashi and Ran.

science's viewpoint. He holds that if a physician confirms that an infant experiencing physiologic jaundice is in no danger, then the circumcision may take place as soon as the baby's complexion returns to normal. Accordingly, we may rely on the opinions of the *Aruch Hashulchan* and *Maharsham* that seven additional days need not be waited before performing the *brit*. Moreover, Rabbi Waldenberg rules that if the jaundice is visually waning and has disappeared from most of the body, we may then rely on a medical evaluation in order to permit immediate circumcision.⁵² Rabbi Yosef Eliyahu Henkin and Rabbi Yaakov Kamenetzky adopt a similar approach, but only to permit circumcision *bizmano*, at its proper time, on the eighth day. In addition, they stipulate that the bilirubin must be no higher than 10 mg / dl. However, if the eighth day has already passed, then the *milah* is further delayed until the jaundice has disappeared entirely.⁵³

Medical Intervention

It is important to note that contemporary *poskim* agree that if it becomes necessary to place the ailing neonate in an incubator or execute an exchange transfusion, the *milah* must be postponed an additional seven days after the baby heals.⁵⁴ However, the *Ot Habrit* rules that placing the baby under lights for phototherapy does not create the status of *choleh*. This prophylactic therapy, he asserts, is only necessary to prevent a

52. Rabbi Waldenberg cites *Koreit Habrit* (263:1) and *Sefer Ot Chaim Ve'shalom* (263:2) in support of this position. *Arzei Ha'levanon*, *siman 62*, maintains that circumcision must be delayed only if jaundice is manifest over the surface of the entire body.

53. *Emet L'Yaakov*, Y.D. 263, page 355, footnote 157.

54. *Iggerot Moshe*, Y.D. *chelek 2, siman 12*; *Tzitz Eliezer*, *chelek 13, siman 82*. If the baby is placed in an incubator, these *poskim* rule that the count begins once the baby is removed from the apparatus.

significant rise in bilirubin and obviate the need for more invasive treatment. Furthermore, he maintains that "*hatafat dam brit*"(drawing a drop of blood) can be performed on a baby even while the symptoms of jaundice are manifest. This procedure is no worse than the multiple drawings of blood normally done by the hospital (such as for testing bilirubin levels).⁵⁵

Conclusions

The debate among the *Rishonim* and *Acharonim* regarding the nature of jaundice has reached a fascinating climax. Modern medical science has validated both sides of the halachic controversy, determining that jaundice can be either a serious illness or a natural and normal phenomenon of infancy. Furthermore, with the advent of an objective, accurate and consistent blood bilirubin test, blood value calculations have crept into the halachic literature , shifting the emphasis for many *poskim* from age-old skin color assessments. Accordingly, pathologic jaundice appears to be universally recognized by contemporary authorities as a "*choli she'bekol ha'guf*" (systemic illness), mandating a postponement of the circumcision and a seven-day waiting period. The halachic debate about physiologic jaundice, though, remains unresolved, with *poskim* adopting a wide range of positions.

Parents, *mohelim* and rabbis, when contemplating circumcision on a newborn with jaundice, must not only consider the danger to the baby, but wider halachic ramifications as well. Rabbi Yakov Ettlinger maintains that since it is forbidden to circumcise a baby with jaundice, one who does so on the Sabbath desecrates the Sabbath. Moreover, he argues that the designated time for circumcision does not arrive until after the

55. *Ot Habrit*, Y.D. 263:1, notes 1,3.

jaundice is resolved. Just as the mitzvah of *milah* is not fulfilled when circumcision is performed before the eighth day, similarly no mitzvah is fulfilled when a baby is circumcised while still jaundiced. Consequently, Rabbi Ettlinger posits that if the *brit milah* is performed on a sick newborn or during the required seven-day waiting period, then *hatafat dam brit* is required following the baby's recovery.⁵⁶

In light of the *Binyan Tzion*, it is of utmost importance to properly evaluate the health of the jaundiced newborn from both medical and halachic perspectives. Indeed, Rabbi Waldenberg writes that as a result of medical advances and technology it is absolutely forbidden to assess a jaundiced newborn without first taking a blood bilirubin test. A visual inspection is insufficient and can be misleading. Visual signs of jaundice will be manifest in children from a more pigmented ethnicity only at higher bilirubin levels than a baby with a naturally more pale complexion.⁵⁷ On the other hand, *Ot Brit* warns *molehim* against strictly relying on bilirubin levels by establishing a universal cutoff value. Rather, the family pediatrician must always be consulted in cases of neonatal jaundice.⁵⁸ Therefore, when parents find themselves in this situation, a competent rabbi, *mohel* and pediatrician should be consulted.

56. *Binyan Tzion*, siman 87 and *Aruch La'ner*, *Yevamot* 71b. See also *Ot Chaim Ve'shalom* 262:5 and *Minchat Yitzchak*. Although other poskim disagree with the *Binyan Tzion* regarding whether physiologic jaundice delays the *milah*, his position nonetheless highlights the importance of this aspect of the halacha.

57. *Tzitz Eliezer*, chelek 13, siman 82. See *Contemporary Halachic Problems*, vol. 2, page 238, regarding this issue.

58. *Ot Habrit*, Y.D. 263:1, note 1.

The *brit milah* ceremony symbolizes one of the fundamental tenets of Judaism. *Chazal* assure us that in seemingly hopeless times when *Bnei Yisrael* lack even “*maasim tovim*”, good deeds, the Almighty, through the merit of circumcision, will redeem them.⁵⁹

59. *Agadat Breishit* (Buber) perek 17.

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Halacha and Technology: Erasing G-d's Name from a Computer

Aryeh Brueckheimer

As technology advances, there is a necessity to relate new inventions to Jewish law. During the past quarter century, the computer has become a preferred tool for writing. From this arises the halachic question: Is erasing G-d's name from the computer prohibited, just as it is from a piece of paper? The intention of this paper is to discuss how halacha views electronically deleting G-d's name. First, we will examine the parameters and scope of erasing G-d's name according to Jewish law. Next, we will analyze two components of the computer, the memory storage device and the monitor. Finally, we will assess whether and how the prohibition applies to these devices.

The source of the prohibition to erase G-d's name comes from a verse in *Devarim*. The context is within a discussion of laws that the Jews were required to follow upon entering the land of Israel:

Utterly destroy all the places where the non-Jews worshipped... Destroy their altars and burn their worship trees and destroy their idols and destroy their name completely from that place [Israel]. [However] do not do that to *Hashem* your G-d.

The *Sifre* (*Piska* 9) brings Rabbi Yishmael's explanation of the last phrase:

From where do we know that one who erases one letter of *Hashem*'s name has transgressed a prohibition? As it says "destroy their name; do not do that to *Hashem*."¹

The Gemara brings this law in *Makot* (22b) and says that if one did the act of erasing G-d's name, he would receive lashes.²

Rambam cites this prohibition in *Yad Hachazaka*³ and mentions that there was a subsequent rabbinical decree that expanded the prohibition to erasing any part of *Tanach*, even if G-d's name is not written there.⁴ In his commentary on the *Shulchan Aruch*,⁵ the *Magen Avraham*⁶ says the rabbinical decree would not be limited to the books of *Tanach*, but would also prohibit erasing from any book that discusses Torah matters.

I. Memory Storage Devices

In order to see how these rules apply to a computer-generated name of G-d, it is important to understand how writing is achieved on a computer. The first computer component we will look into is the memory storage device.

1. *Devarim* 12:2-4.

2. A question arises why there would be a punishment of lashes. The difficulty lies in the fact that erasing G-d's name is only one of the many prohibitions the *Sifre* extrapolates from this verse. Only if one transgresses all of the prohibitions learned from the verse should he receive the punishment of lashes? A number of answers have been suggested:

A. *Torah Temimah* explains that since all the prohibitions are mentioned in the preceding verse, they are not considered a *lav she'bechhalot* [a prohibition including many individual prohibitions] and one receives lashes for violating each individual prohibition.

B. *Minchat Chinuch* suggests that the different acts are in fact all fundamentally the same act, namely destroying an object with G-d's name on it. Therefore, violating any one of these acts individually is sufficient reason for the transgressor to receive lashes.

3. *Hilchot Yesodei HaTorah*, chapter 6.

4. An example of this would be to destroy part of *Megillat Esther*, which does not mention the name of G-d.

5. The *Shulchan Aruch* does not directly discuss this issue, but mentions it in two separate discussions in *Orach Chaim*: Once in *Hilchot Batey Knesset*, chapter 154, and a second time in *Hilchot Shabbat*, 334.

6. *Orach Chaim* 154:9.

The three most common storage devices are the hard disk, floppy disk, and compact disk (CD).

Hard Disk

The hard disk is the computer's main memory storage. A hard disk is composed of two aluminum platters that permit memory to be stored on its surface. The surface is covered with a magnetic material and is made up of different sectors (columns) and tracks (rows). The platters and the read-and-write head are contained in an airtight casing to protect the platters from becoming contaminated.

The read-and-write head reads and stores the data on the hard disk. This takes place while the platters are spinning at the rate of 3,600 to 7,200 revolutions per minute. At this rate the distance between the head and the surface of the plate while it is spinning is approximately one ten-millionth of an inch.⁷

The data are stored on the hard disks throughout the read-and-write head, sending electronic impulses to the disk. These impulses magnetize the surface as either negative or positive. Through this way, data are stored in a binary language referred to as ASCII. The positive charges stand for a "1" and negative charge stands for a "0". (For example 0100001 means a letter "A" in ASCII.)

Floppy Disk

Storage on a floppy disk is accomplished similarly to hard disk storage, although there are two basic differences. First, instead of the plate being made of aluminum it is made of a

7. *Discovering Computers 98*, Shelly, Cashman, Waggoner. Course Technology (USA:1998) pg. 5.10.

thin Mylar plastic which is coated with an oxide material. Second, since the floppy disk offers easy portability, its design is different. Unlike the hard disk that has its own read-and-write head, the floppy disk relies on the computer to supply one. This second distinction causes the floppy disk's read-and-write function to be slower, with an average speed of approximately 300 rpm.⁸

Compact Disk

A compact disk is an optical plastic disk. With the use of laser technology, patterns of microscopic grooves are placed onto the disk. In writing to the CD, there is a high precision laser beam that makes grooves, called pits. The non-pitted area is called land. Like the hard and floppy disks, this type of storage is also in binary code. The grooves, however, are in place of charging particles. A pit stands for a "0", while a land stands for a "1".

When the computer wants to read from the CD, it shoots a low-powered laser. If the laser hits land, the light is reflected back. If the laser hits a pit, the beam is not reflected.⁹

Let us see how the data storage is viewed in relation to the prohibition of erasing G-d's name. Since the invention and the widespread usage of computers is recent, there are very few articles or books discussing the prohibition of erasing G-d's from a computer. However, there is more discussion about the issue of erasing G-d's name from audiocassettes, which can serve as a springboard for our discussion. Audiocassettes and disks use similar technology, the difference between them being the way information is stored. On a disk, the positive and negative charges act as a binary language, while on an

8. Ibid. pg. 5.6.

9. Ibid. pg. 5.14.

audiocassette the charges are used to make magnetic patterns.

Perhaps the most stringent view on the issue of erasing G-d's name from an audiocassette is that of Rabbi Moshe Feinstein. While there aren't real words on a tape, and there is no clear prohibition, he feels one should refrain from erasing or over-taping, because it appears as if one is erasing.¹⁰ It is very possible that Rabbi Feinstein would be of the same opinion in regards to disks.

Rabbi Yosef Shalom Elyashiv and Rabbi Ovadiah Yosef disagree with Rabbi Feinstein's concern. Rabbi Elyashiv believes that since there is no real substance to the words, just electric charges, there is absolutely no prohibition of erasing G-d's name from an audiocassette.¹¹ Rabbi Yosef includes two additional reasons.¹² Firstly, he says that erasing or over-taping an audiocassette is at most only considered an act of indirect erasing. Secondly, he points out that it wasn't "written" for the purpose of being part of a Torah scroll.

If we seek to employ these rabbinic opinions as precedents for ruling on the question of erasing the divine name from a computer, we need to see if the realities are comparable: Rabbi Elyashiv's explanation seems very logical for understanding why the prohibition would not apply to audiocassettes, and the reasoning could easily be extended to disks. But does the same logic apply to CD's? Writing on a CD, as described above, has physicality to it. Even though they are microscopic, the lands and pits still have substance to them.

10. *Iggerot Moshe, Yoreh Deah* I:173; *ibid.* II:142. Some understand these responsa as actually permitting erasing G-d's name from an audiocassette.

11. *Yashiv Moshe*, page 145.

12. *Yabia Omer*, vol. 8, *Yoreh Deah* 26.

Rabbi Yosef's explanations also need to be analyzed further to see whether they can be applied to our case. One of his explanations is that erasing or over-taping is considered merely an indirect act of erasing, which is not prohibited. This bespeaks two assumptions: First, that indirect erasing is permissible. Second, that hitting the record button is considered an indirect act in effecting erasure.

Indirect erasing

The Gemara in *Shabbat* (120b) presents a debate between two *Tannaim*:

If one had the name of G-d written on his flesh he should not bathe himself, anoint himself, and he should not stand in a disgusting place. If the time comes that he is required to immerse himself in the *mikvah* (ritual bath), he should put a bandage around the name and immerse himself. Rabbi Yosse says that he can immerse himself as he normally does [without putting on a bandage] as long as he does not rub on the location of the Name.

The Gemara concludes that both *Tannaim* agree that one who indirectly erases G-d's name has not violated the prohibition, based on the Torah's phrase "do not **do** that to *Hashem* your G-d." Directly doing is what is problematic, but indirectly doing is not.

How do we define what is considered indirect? Why was immersion in a *mikvah* defined as indirect? The Meiri says since the name of G-d is not being erased immediately upon touching the water, it is considered indirect. But the Rashba qualifies indirect as a case where erasing will not definitely occur, as in our case of immersion. But if the action would definitely cause erasing, it is still considered direct erasing.

Rambam brings indirect erasing as an exception to the prohibition of erasing. The *Tur* and the *Shulchan Aruch* make

no mention of indirect erasing. It is a debate among the later commentaries whether the omission of the *Shulchan Aruch* is actually proof that he does not believe one is permitted to erase G-d's name even indirectly.

The *Pitchei T'shuva* presents both sides:¹³ Responsa *Beit Ephraim*¹⁴ and *Nodah B'yehuda*¹⁵ say that we do follow the conclusion of the Gemara, and rule that all indirect erasing is permissible. *Aruch Hashulchan*¹⁶ says that the omission of the *Shulchan Aruch* was intentional, because immersion in a *mikvah* is the only permitted instance of unintentionally erasing G-d's name. Any other case is viewed as a direct act of erasing.

Rabbi Ovadiah Yosef seems to be following the first opinions brought in the *Pitchei T'shuva*, and therefore permits indirect erasing. The difficulty that remains in his explanation is whether we consider erasing from a disk (or in his case an audiocassette) to be an indirect action. According to the Rashba, it would seem to be considered direct since it will definitely occur. The Meiri would also seem to view this as direct, since it occurs immediately. Rabbi Yosef seems to be working with different qualifications of indirect.

Rabbi Yosef also offers the reasoning that lack of correct intention when writing removes the biblical prohibition. His assumption is that the prohibition of erasing G-d's name applies only when it was written with the intention of being part of a Torah scroll, *lishma*.

Lishma

13. *Yoreh Deah* 276:19.

14. Vol. 18 *siman* 61.

15. *Orach Chaim* 17.

16. *Yoreh Deah* 276:36

Does the biblical prohibition of erasing G-d's name apply to any time G-d's name was written, or only when it was written *lishma*? If the latter would be true, the only time it would be prohibited to erase G-d's name would be when it was written on a Torah scroll.

Rambam opens with a general rule. "Anyone who destroys one of the names of *Hashem*..." It would seem his opinion is that the prohibition would always apply, no matter what the intent of the writer. Conversely, R. Eliezer from Mintz (*Yeraim*), a member of the school of Tosafot, is brought on location by the *Hagahot Maimoniyot* commentary as arguing with Rambam, being of the opinion that it is only problematic to erase G-d's name if it was written *lishma*.

In his work *Chazon Ish*, Rabbi Yeshayahu Karelitz says that the *Yeraim* was referring only to a case where the name of G-d was written by accident. For example, if the person was writing "Yehudah" in Hebrew and forgot to put the letter *daled*. However, if the person had intended to write the name of *Hashem* but did not have the higher concentration of sanctifying the word, the *Yeraim* would agree that it is problematic.¹⁷

Rabbi Yosef seems to be accepting the *Yeraim*'s opinion, but not in as limited a way as the *Chazon Ish*.

There are two additional explanations that could have been used to support the opinions that erasing from an audiocassette (or in our case disks and CD's) would be permissible: if G-d's name is written in a different language, or if the word is invisible to the eye.

Different language

What if G-d's name was written not in Hebrew, but in

17. *Yoreh Deah* 164.

English or, as in our case, written in the ASCII binary code?

There is a debate among commentaries of *Shulchan Aruch* whether the prohibition of erasing G-d's name applies to all languages or just to Hebrew. The *Shach* is of the opinion that the prohibition applies only to Hebrew,¹⁸ and *Aruch Hashulchan*¹⁹ points out that this is the opinion of the *Tashbetz*²⁰ as well. *Magen Avraham* cites *Shiltei Giborim* who says one should try to avoid erasing G-d's name even if written in a different language.²¹

Consequently, if we follow *Shach*'s opinion, there would be no problem of erasing G-d's name or words of Torah from a disk or CD. (The majority opinion agrees with the *Shach*.) But if we follow the *Shiltei Giborim*, ASCII is still a language and one should refrain from erasing files from disks or a CD.

Invisible to the eye

The ASCII language written on the storage devices can not be read or even seen by the naked eye. Would this affect the halacha? In many areas of Jewish law, we assume that we only worry about what is visible to the naked eye. For example, regarding the prohibition of eating bugs, if one wants to eat lettuce he must check it for insects, but would not be required to look for them under a microscope. Otherwise, there would be no end, since everything contains microorganisms (or bugs only visible with a microscope), and even breathing would become prohibited.

18. Ibid. 179:11.

19. Ibid. 276:24.

20. In his responsa *siman* 2.

21. *Orach Chaim* 334:2.

II. Monitors

We now have to consider "erasing" G-d's name from the computer screen (monitor). There are two common types of monitors: a CRT (cathode ray tube) and a flat screen.

CRT monitor

The CRT is the most common type of monitor. It consists of a glass tube that is narrow on one end and wide on the other. On the narrow side there is either one electric gun, if it is a single color monitor, or there are three electric guns for color monitors, one for each of the three primary colors.

The electric beams shoot electrons at the phosphorous-coated screen that is on the wide end of the tube, where there are many single-unit picture elements called pixels. In a colored screen each pixel contains three phosphorous dots, one for each of the primary colors.

The pixels make up rows and columns along the entire width and length of the screen. The greater the amount of pixels, the clearer the image on the screen. For example, Video Graphics Array (VGA) screens have about 300,000 pixels while Super VGA screens have around 800,000 pixels.

It is especially important to realize that although images on a screen look as if they are continuous, in reality they are not. The pixels are grouped so tightly together that they *appear* to be continuous. For example, an "E" really is this:

⑧ ⑧ ⑧ ⑧ ⑧ ⑧
⑧
⑧
⑧ ⑧ ⑧ ⑧ ⑧ ⑧
⑧
⑧
⑧ ⑧ ⑧ ⑧ ⑧ ⑧

The electric beam is shot along the width of the screen row by row. After it makes one cycle, it starts over again. The speed at which the gun repeats a cycle is called a refresh rate.

Refresh rate is about 60 seconds. The intensity of the pixel is controlled by the amount of electrons that hit it.²²

Flat Panel Displays

There are two types of flat panel displays. One type is called liquid crystal display (LCD). The second is called gas plasma display. These types of screen are more commonly found with portable computers.

The way an LCD monitor works is that the liquid crystal is placed inside two sheets of polarized material. When a small electric current is applied through passing wires, the crystals group together in order to prevent the light from shining through, resulting in an image appearing on the screen.

Gas plasma displays function somewhat similarly. The distinction lies in the replacement of gas plasma for the liquid crystals. The gas glows when a current is sent to that pixel, and a group of pixels form the image similar to a CRT monitor.²³

Rabbi Yitzchak Hecht, was asked if one installed light bulbs that spelled out the name of G-d, would it be permissible to unplug the device once the lights were on?²⁴ This would seem similar to our case of computer monitors, since it is electric light that is generating G-d's name via the pixels on the computer screen.

Rabbi Hecht said it is permissible, since cutting off the electric supply is not erasing G-d's name; rather it is preventing it from being written. We could extend this answer to the computer screen as well. As explained above, the letters on a

22. Shelly, Cashman, Waggoner, pg. 4.31.

23. Ibid. pg. 4.29.

24. Responsa *Sha'arei Kodesh*, Siman 166.

screen are not permanent, but are constantly being refreshed on the screen. Scrolling or deleting does not erase the letters, but rather simply prevents them from being written.

Rabbi Hecht makes both assumptions that Rabbi Yosef had made. First, that this would be a case of indirect erasing, and second that indirect erasing of G-d's name is permissible. Therefore, Rabbi Hecht must also be working with a definition of indirect erasing other than the one explained by the Rashba and Meiri.

Rabbi Wozner in *Shevet Halevi* seems to argue with Rabbi Hecht. Rabbi Wozner discusses if one who erases letters from a computer screen on Shabbat has transgressed the biblical prohibition of erasing letters. In that discussion he says that causing letters to erase from a screen by pushing buttons is not viewed as indirect, since that is the normal way of erasing letters from a screen.²⁵

Rabbi Yitzchak Elchanan Spector is cited as opining that if one writes words of Torah or G-d's name on a blackboard, it is permissible to erase it, since when it was written there was no intention for it to be permanent.²⁶ Similarly, applying this standard to the present question, it should be permissible to erase G-d's name from a computer screen. The *Tashbetz*, who preceded Rabbi Spector by centuries, disagreed.²⁷ He thought

25. Vol. 6, *Orach Chaim* siman 37. One may claim that Rabbi Wozner was only using these definitions of indirect/direct acts in regards to Shabbat. The Gemara cited above had assumed that the definitions of direct/indirect are the same for prohibitions on Shabbat and the prohibition of erasing G-d's name.

26. Cited in an article written by Rabbi Mordecai Friedman titled: "The Sanctity of G-d's Name, Part 1: Erasing Sacred Texts from a Computer Screen." The article can be found at the Yeshivat Har Etzion Virtual Beit Midrash (VBM) or in *Alei Etzion* vol. 8.

27. Responsa *Tashbetz*, 2.

that the lack of intent for the writing to be permanent has no effect on the prohibition of erasing G-d's name.

There is another issue that must be taken into account when discussing erasing from computer monitors. As mentioned previously, the way the information is seen on a screen is through lighting up pixels. Most screens by default have the words as black on white. On a CRT screen the black letters appear not due to the pixels being lit up but rather from the area around it being white and forming the letters.²⁸ This would seem to fit the category that the Rabbis refer to as *chok tochose*, which means the letters appear by virtue of scraping the area around it.

Chok Tochose

The Gemara in *Gittin* (20a) discusses the laws of what material a *Get* (divorce document) needs to be written on. It says that since the Torah states "and he should write it [the divorce document]" (*Devarim* 24:3), it teaches us that one needs to write and not engrave. The Gemara, after a lengthy discussion, says the only type of engraving that is considered writing is when the letters are carved into the material. But if one engraves in the fashion that the area around the letters is carved away leaving the letters, this is not considered writing. The reason for this distinction is that in the latter case the letters were not written. Rather as a result of scraping away the surrounding area, the letters seem to be formed, which is *chok tochose*.

The above Gemara is only discussing the law of writing a *Get*. There is a debate whether this definition and limitation of writing apply in other spheres of Jewish law as well. If we

28. This is true only for a CRT screen. On a flat screen the pixels are lit to look black. This information was obtained from Mr. Dan Gilbert, a Goldman Sachs Program Analyst.

would expand it to the prohibition of erasing G-d's name, then if the words were hollowed out of an object, there would be no violation to erase them. *Responsa Chavot Yair* argues and claims that the discussion in the Gemara is indeed limited to divorce documents, but nevertheless he claims erasing a name of G-d that was written in a manner of *chok tochote* would be prohibited.²⁹

This issue remains in need of further rabbinic discussion in order to arrive at a clear halachic directive.

According to Rabbi Feinstein, as quoted above, over-taping an audiocassette that contains G-d's name appears to be erasing. He therefore felt that one should refrain from doing so. Certainly, if this is the case with magnetically imbedded tape, one would surely think that deleting words that are actually visible on a computer screen would be at least as problematic.

Rabbi Joseph Soloveitchik was once discussing whether it was permissible to use a microphone on Shabbat. He commented that there were those who, due to their lack of knowledge of how a microphone works, had acted too hastily in prohibiting the use of a microphone on Shabbat. On the other hand, he said that there were those who, due to their ignorance of the laws of Shabbat, were too quick in permitting their use.³⁰ Only through a complete understanding of both the technical side of how a mechanism works, and a comprehensive knowledge of the applicable halachic issues, can one come to a correct halachic ruling.

29. *Siman* 16.

30. *Nefesh Ha'rav*, Rabbi H. Schachter, page 169.

Daat Torah

Rabbi Alfred Cohen

Daat Torah is a concept of supreme importance whose specific parameters remain elusive. Loosely explained, it refers to an ideology which teaches that the advice given by great Torah scholars must be followed by Jews committed to Torah observance, inasmuch as these opinions are imbued with Torah insights.¹

Although the term *Daat Torah* is frequently invoked to buttress a given opinion or position, it is difficult to find agreement on what is actually included in the phrase. And although quite a few articles have been written about it, both pro and con, many appear to be remarkably lacking in objectivity and lax in their approach to the truth. Often they are based on secondary source and feature inflammatory language or an unflattering tone; they are polemics rather than scholarship, with faulty conclusions arising from failure to check into what really was said or written by the great sages of earlier

1. Among those who have tackled the topic, see Lawrence Kaplan ("Daas Torah: A Modern Conception of Rabbinic Authority", pp. 1-60), in *Rabbinic Authority and Personal Autonomy*, published by Jason Aronson, Inc., as part of the Orthodox Forum series which also cites numerous other sources in its footnotes; Rabbi Berel Wein, writing in the *Jewish Observer*, October 1994; Rabbi Avi Shafran, writing in the *Jewish Observer*, Dec. 1986, p.12; *Jewish Observer*, December 1977; *Techumin* VIII and XI.

Rabbi, Cong. Ohaiv Yisroel, Monsey, N.Y.;
Rebbe, Yeshiva University H.S. for Boys, N.Y.

generations.²

Leaving aside these rather flawed and argumentative writings, we must acknowledge that the topic of *Daat Torah* is indeed a very important one, raising a question that every Jew

2. As an example of the opinion that there either is no such thing now as *Daat Torah* which Jews committed to Torah are obliged to heed or, even if there is, that it has a very limited authority, see the long essay by Lawrence Kaplan in *Rabbinic Authority and Personal Autonomy*, cited in the previous footnote. Kaplan argues essentially that the concept *Daat Torah* was invented, or at least developed, in order to create a submissive society.

In support of his thesis that the Chazon Ish was one of the great exponents of "submissiveness" (p.24), Kaplan cites a letter of the Chazon Ish with what he terms a "forced interpretation" of a text in the Rashba; however, a close reading of the original makes it difficult to support Kaplan's conclusions, for the Rashba says precisely what the Chazon Ish said he said.

It is ironic that in Kaplan's view *Daat Torah* is an ideology which arose in response to the perceived negative influences of modernity—yet, when challenged to take a position on the propriety of women's prayer groups, one of the more important "modern" questions to surface in the past few decades, Rabbi Louis Bernstein, then president of the Rabbinical Council of America and never remotely associated with the Right Wing of Orthodox Judaism, turned to a number of *Roshei Yeshiva* for their ruling, and not to "modern" or pulpit rabbis.

Rabbi Berel Wein wrote a negative review and commentary on Kaplan's article, which appeared in the *Jewish Observer*, October 1994, pp.4-9. Although it is common practice to allow an author to respond to criticism in the same journal which finds fault with his thesis, no response by Kaplan appears in the *Observer*.

Those writing in favor of the authenticity of the notion *Daat Torah* (see, for example, the article by Shlomo Shaanan in *Techumin* referenced in note no. 1) also often fail the objectivity test when reporting what our sages actually said. Thus, he purports to base this concept on the Gemara itself: in *Bava Bathra* 116a it says that since nowadays there are no prophets, if one has a problem he should go to a wise man (*chacham*), i.e., a scholar well-versed in Torah wisdom. Now, while it

who is conscientious in his Torah observance needs to address: What is meant by the term "*Daat Torah*"? Does Judaism believe there is such a thing as *Daat Torah*? What does it encompass? To what extent is *Daat Torah* binding upon individuals in the Jewish community?³ How does one know who is the individual

is true that the Gemara says this – the author has left out the rest of the sentence! It actually says "...let him go to a *chacham*, and he will pray [to God] for mercy for him!" The Gemara is advising people to ask the Torah scholar to pray for them, not to advise them! This particular talmudic passage has really nothing to do with submitting to the directives of Torah scholars! Unfortunately, a similarly cavalier attitude is evident in his use of other sources, such as the *Tzitz Eliezer*.

Perhaps Shaanan's weakest argument is based on a verse in the book of I Samuel (9:6), where he seeks to prove that asking advice from a *chacham* has its source in the Torah. When Saul, prior to being chosen as king, was searching through the countryside for his missing donkeys, his attendant advised him to seek out Samuel and ask him what to do. But he is totally misreading the verse -- they went to ask the "*ro'eh*", the "seer" for his *prophetic* vision, not for his rabbinic input! How can one compare a prophet to a rabbi?!

It strikes me that this is indicative of one of the major problems in the Jewish community – there is precious little objective examination of principles, but rather defensive polemic to protect a particular position. The unwillingness to consider other points of view and the lack of preparedness to counter objections with facts is an unhealthy feature of our polarized Jewish society. This turns a sober, serious inquiry about the deeper requirements of Jewish *hashkafa* into dogmatic argumentation, which in the long run weakens, rather than strengthens, belief.

3. In the *Yated* of February 8, 1991, an article appeared seriously questioning how deep the commitment to *Daat Torah* really is, in light of the reality that despite the "unanimous urging of *Gedolim* in Eretz Yisrael that those who are in the country should not leave" during the threat of the Persian Gulf War, yeshiva students fled in droves. That such an admission should be voiced in the pages of the *Yated*, which caters almost exclusively to the right-wing Orthodox, is a stunning admission that this ideology has a weak constituency in practice, if not in theory.

or the group endowed with *Daat Torah*? As often occurs in such a beclouded topic, there is no doubt a great deal of truth and benefit in this ideology, but also many problematic areas in the concept of *Daat Torah* as it is conceived today.

The present study will address these questions, hopefully in an objective manner, relying on the actual words and writings of our sages as the primary source for arriving at an informed understanding of this most vital issue.

First, let us address the role of a *talmid chacham* in society; i.e., what is included in the concept *Daat Torah*?

It is not uncommon today for pious, sincere individuals to ask their rabbi's advice on questions from the sublime to the ridiculous, having nothing to do with either halacha or *hashkafa* (ideology), but of a practical and mundane character. I have personally been assured by a very sincere individual that a truly religious person will ask his rabbi what color to paint his house [!], whether to purchase a new car, whether to undertake a new business venture, and the like. Others have a more circumscribed list of topics on which they feel rabbinic advice is required.

A number of eminent Torah personalities in the past have written about going to a *talmid chacham*, a Torah scholar, to ask his guidance on everyday situations. The *Ba'al haTanya*,⁴ when asked about doing this, expressed his surprise and consternation:

My dear friend...."Remember the days of old, understand the years of every generation" – has there ever been anything like this since the beginning of time?! Where, in all the books of the scholars of Israel, whether the earlier or later ones, have you ever seen such a custom instituted, to ask about a secular question, such as what

4. R. Shneur Zalman of Liady, the first Lubavitcher Rebbe.

to do in some mundane matter, even from the greatest of the early wise men of Israel, such as the *tannaim* and *amoraim*...but rather [people would turn to] actual prophets, such as there used to be, such as Shmuel the Seer, to whom Saul went to ask about the donkeys which his father had lost. But in truth, all matters relating to a person, other than something having to do with Torah or fear of heaven, are not apprehended other than through prophecy, and not by a wise man. As our rabbis have taught, "Everything is in the hands of heaven other than fear of heaven..."

And when our rabbis *zt"l* said that people "derive benefit from him [from a *talmid chacham*] by advice and sound wisdom," this refers to words of Torah, which is called "sound wisdom".⁵

In other words, the first Lubavitcher Rebbe was astounded that anyone would think a rabbi would have some particular insight on a mundane personal matter.⁶ But a contrasting approach is expressed by the Meiri in his commentary to *Pirkei Avot*, which extols the virtues of a *talmid chacham*: "People benefit from his wisdom and good counsel, [to know how to proceed] in their material activities."⁷

Clearly, there are times when it is helpful to have wise

5. *Iggeret Hakodesh of Baal HaTanya*, Chap. 22.

6. This sentiment is in striking contrast to a not-uncommon practice in the Chassidic community of today.

7. 6:1. See also comments of *Tiferet Yisrael*, *ibid*. The story is told that a man once came to R. Elchanan Wasserman to ask his advice about a business venture. Rav Elchanan opened up a *sefer* and sat down to learn for a brief time. Then he turned to his visitor and offered his answer. The man asked him, "Where in the Gemara did you find the answer?" To which the Sage replied, "The words of Torah straighten one's intellect, and when I learned a bit, *Hashem* helped me to find a good advice for you." *Lekach Tov*, VI, p. 121.

guidance. Many young persons find it beneficial to discuss with their religious mentors (whether Rosh Yeshiva, Rebbe, or teacher) topics of personal interest which are not necessarily religious in nature, or may impact only incidentally on their spiritual well being. On a personal level, I was fortunate enough in my youth to be able to have numerous conversations with the Rosh Yeshiva of Chaim Berlin, Rav Yitzchak Hutner *zt"l* and also Rav Yisrael Gustman *zt"l*. These wonderful encounters were utilized to discuss serious questions about my spiritual growth and direction, and it is my understanding that that is the irreplaceable benefit that only a *talmid chacham* can offer. But to expect guidance from a Torah giant for the mundane activities of one's life appears to me – and to many others – to be trivializing and wasting their true gifts. It is my intuition that had I done so, they would have laughed!

Sometimes, it is easier to seek guidance from an "outsider" than from parents. Many young people nowadays go to Israel for a year of post-high-school Torah study, where they often form an intense relationship with one of their teachers, *rebbeim*, or Rosh Yeshiva. At times, these religious mentors play a major role in helping the young person make life-altering decisions. Do these one-on-one sessions qualify as *Daat Torah*?

Furthermore, from time to time rabbinic figures will make pronouncements about political agendas or personalities – do these qualify as *Daat Torah*? If there is *Daat Torah*, what are its legitimate parameters? Do great Torah scholars possess some kind of special insight even into mundane matters?

The Gemara says that "a *talmid chacham* is preferable to a prophet."⁸ What does this mean, in what sense is he superior? Commenting on this dictum, the Rashba notes,

8. *Bava Bathra* 12a.

Although "prophecy was taken away from the prophets," this refers to prophetic visions, but the prophetic insight of the wise men, which [comes] via wisdom, that has not been nullified; rather they [*talmidei chachamim*] know the truth through the Divine spirit which is within them.⁹

Following in the same path, the *Ritva*¹⁰ also understands Divine wisdom as having been given to Torah scholars, explaining that "they perceive through their intellect many things which, with natural intelligence, it would not be possible to apprehend." The *Maharal* reaches a similar conclusion:

[T]he wise man [*talmid chacham*], based on his intellect...can grasp matters which are exceedingly obscure.¹¹

It is my understanding that these great *Rabbonim* are describing a phenomenon very close to what is colloquially perceived as *Daat Torah*: That a person who spends his nights and days immersed in Torah wisdom eventually becomes imbued with an almost intuitive grasp of what *Hashem* wants; in that sense, his advice can be wonderfully insightful for the individual and of great assistance to the community.

Written centuries ago, these opinions hardly constitute a "modern phenomenon"¹² reflective of a breakdown in traditional communal structures, and the concomitant weakening of the

9. Rashba, *ibid*. The *Zohar*, *Sh'mot* 6:2 writes, "The Divine spirit rests upon a wise man always, [but] upon a prophet, [only] at times."

10. *Ibid*. See also *Iggerot Chazon Ish* I:182, "Faith in scholars (*emunat chachamim*) is a function of faith in wisdom in general; there is no wisdom in the world without [its being] funneled to us through a living person."

11. First introduction, *Gevurot Hashem*.

12. As stated by Kaplan, *op. cit*, p. 12, and in the pamphlet by Rabbi S. Spero, "Divrei Torah", p. 18.

influence of community rabbis and lay leaders. Although the role of *Roshei Yeshiva*, possessed of great Torah scholarship and often personal charisma, may indeed be far more prominent nowadays than in the past, it is hardly indicative of a new phenomenon; it merely signals a new locus for *Daat Torah* in our day.¹³

According to Rav Yosef Dov Soloveitchik *zt"l*, one of the most difficult burdens placed upon a Jew is subjugating his will to the dicta of his religious mentor ("*lehitbatel le-rabo*").¹⁴ In his view, the entire structure of Judaism is predicated on this acceptance of the teachings of one's rabbi; a Jew should ask himself, when a new challenge arises, "How would my Rebbe have responded?" Rav Soloveitchik taught that this was the essence of the clash between Korach and Moshe. Korach claimed that "all the congregation are holy," all of them were

13. The Vilna Gaon (Commentary to *Mishlei* 16:1) and also Rav Kook (*Mishpat Kohen* 95:7, on the phrase "*sod Hashem Liyerayav*") express the sentiment that the *Ribono shel Olam* assists the sincere Torah scholar to arrive at the proper conclusion; this is akin to what poskim term *siyata di'shemaya*. (See *Sotah* 4b and 10a).

14. As reported a number of times in the biography *Nefesh HaRav*, written by his student R. Hershel Schachter. See pp. 27, 58, 307. These sentiments are in sharp contrast to the allegation of Lawrence Kaplan (see note no.1) that "the ideology of *Daas Torah* [sic] is a central...element in the ethic of submission that characterizes the rejectionist approach...[which] is ...that unquestioning submission to authority, the authority of *halakhah*, of the *gadol*, of God, is the highest religious value and one that is absolutely opposed to the modern values of intellectual autonomy and self-expression." (pp.24-5). He names the *Hazon Ish* [sic] and Rav Dessler as the two major exponents of this ideology. Yet in Rav Schachter's intellectual biography of Rav Soloveitchik, we find striking evidence that the Rav equally believed and taught this same principle. One can hardly justify characterizing the Rav as rejecting the "modern values of intellectual autonomy and self-expression."

present at the giving of the Ten Commandments, and therefore, in essence each Jew was entitled to interpret the Torah as he saw fit. To Moshe Rabbenu, this spelled the destruction of Judaism; for this reason, he reacted as strongly as he did, begging *Hashem* to wipe out Korach and his entire entourage from the face of the earth.

It is clear that Judaism cannot survive with each individual picking and choosing which rules he wants to follow and which to reject. Everyone must have his rabbi or his mentor, whose directives he is prepared to accept even when he finds them difficult.

It is comparable to an individual experiencing certain symptoms, turning to a medical expert for advice. After the doctor has taken many tests and ruled out the usual illnesses, he may still turn to the patient and admit, "I can't tell you for *sure* what you have, because the tests came out negative. However, based on my years of study in medical school, my experience with patients, and years of practice, I have an intuitive feeling that your problem is-." Certainly, his advice would be well worth following. Could his reading of the situation be faulty? Possibly. But it is far more likely that *he* understands the situation better than the patient himself does.

Defining Daat Torah

The Jewish community has been guided for millenia by its Torah leaders. That leadership entails far more than simply deciding whether a chicken is kosher or not, or whether something is *assur* or *muttar*. There is also a deeper awareness of the obligations of the Jewish community vis-a-vis other nations and their role on the world stage at any particular juncture in history. The Netziv alludes to this in the introduction to his commentary on *Sefer Shemot*: After explaining that acceptance of the Torah by the Jewish people is the primary

purpose of Creation, and that it is the role of the Chosen People to be "a light unto the nations" and demonstrate that the purpose of Creation is only to glorify the *Ribono shel Olam*, he comments that nevertheless this truth escapes many individuals:

And yet, there are many of Israel who have not attained [the level of] *Daat Torah*...Nevertheless, only the Torah is the rationale for the elevation of Israel.

It is my understanding that the Netziv here is defining *Daat Torah* as a person's realizing what it is that *Hashem* expects from him, how his life's efforts should be directed toward fulfilling the role of the Jewish community, what is proper and what is not. Most importantly, the key to understanding how best to glorify the Name of G-d through their actions eludes many. Under these circumstances, who better to guide the individual's actions than someone who is endowed with an abundance of Torah insights?

This also was the sentiment expressed by R. Chaim Ozer Grodzinski in a letter to Rav Hildesheimer, who had asked about moving the Rabbinical Seminary started by his father from Berlin to Eretz Yisrael. Rav Chaim Ozer advised him not to:¹⁵ "I told him and requested that he report to others my *Daat Torah* that this should not be done under any circumstances." R. Chaim Ozer explained that when the senior R. Hildesheimer had started his Seminary in Berlin, it was done to combat the Reform movement, "but how can you even think to establish a 'Rabbinic factory' such as this in the Holy Land, wherein there are great yeshivot and great rabbis, great in Torah and *yirat shamayim*?" He was objecting to the purported purpose of turning out "new style rabbis, to whom *Derech Eretz* [worldly knowledge] is the main thing, while Torah is secondary!"

15. *Iggerot Achiezer* No. 270, p.443.

We see here an instance of *Daat Torah* which clearly extends beyond the parameters of pure *p'sak halacha* (deciding whether something is permitted or forbidden by Torah law). Here, *Daat Torah* is the expression of an outstanding Torah leader about what is appropriate in the context of building up the Holy Land and society of Israel.¹⁶

16. Not all questions which Torah leaders are called on to adjudicate fall neatly into a definable category, such as halacha, *hashkafa*, economics, etc. Often, they straddle a few areas and may have broad repercussions. A number of such questions come to mind: When the Soviet Union was under Communist control, there were many who wanted to mount demonstrations on behalf of the beleaguered Jews there, while others tried clandestinely to help them escape or to smuggle in religious books and artifacts. When asked their opinion on the best way to proceed, *Gedolei Yisrael* had to weigh a number of factors: whether public demonstrations to help free prominent Soviet "Prisoners of Conscience" might have negative repercussions on other Jews in the Soviet Union [the Mishnah in *Gittin* 45a cautions that it is prohibited to help a few prisoners escape because it might endanger the other prisoners even more; see Rashi, *d.h. "deleka"*] and whether using up political capital to help Jews in Russia might detract from needed influence to help Jews in Israel.

Another issue which needs *Daat Torah* is whether to return parts of Eretz Yisrael to Palestinians and other Israeli neighbors. Here the *issurim* of giving away any part of the Holy Land, or of *lo techanem*, have to be weighed against the *pikuach nefesh* problems inherent in the current realities. For a discussion of the interface between halacha and practical concerns on this topic, see the articles by Rabbi J. David Bleich and Rabbi Hershel Schachter in volume XVI of the *Journal of Halacha and Contemporary Society*. Clearly, all these issues require consultations with political and military experts, not only halachic expertise. The proper balance of all these factors is expressed in *Daat Torah*.

Consequently, it is distressing to hear that when a major rally of Jews to Washington was called in Spring 2002, there was a difference of opinion about attending. Since Rav Neuberger of Ner Yisrael Yeshiva was in favor of going, and he is certainly an individual with impeccable credentials in the Torah world and, furthermore, is

Whether the phenomenon should be called "*Daat Torah*" or not, there has long existed an awareness in the hearts and minds of Torah greats that, even if one cannot pinpoint the exact chapter and verse, there are certain things which are not in the spirit of Torah or even harmful to it, and therefore should be stopped. Thus, when the first tentative steps were taken by advocates of proto-Reform – such as rearranging the prayers or modifying traditional synagogue architecture – leading rabbis opposed them because they intuited that these preliminary "reforms" were the first steps in the attempted dissolution of Torah Judaism.

It is my understanding that these quasi-intuitive responses were what the Netziv and R. Chaim Ozer were referring to when they mentioned *Daat Torah*.

In his article about *Daat Torah*, Lawrence Kaplan cites the eulogy which Rav Yosef Ber Soloveitchik delivered in 1940 upon the passing of R. Chaim Ozer Grodzinski. The Rav's words eloquently define the phenomenon we are discussing:

*The very same priest, whose mind was suffused with the holiness of the Torah of R. Akiva and R. Eliezer, of Abbaye and Rava, of the Rambam and Rabad [sic], of the Beth Yosef and the Rema [sic], could also discern with the holy spirit [roeh be-ruah ha-kodesh] the solution to all current political questions, to all worldly matters, to all ongoing current demands.*¹⁷

recognized as exceptionally astute in dealing with political matters, it is hard to understand how there could be a contrary opinion in the Torah community. The failure to follow his advice is disheartening to those who would like to feel that opinions expressed as *Daat Torah* are indeed entitled to that lofty encomium.

17. Cited by Kaplan in "*Daas Torah*" pp.8-9. I concur with Rabbi Wein (see note 2) that it is insulting to the memory of Rav Soloveitchik *zt"l* to imply, as Kaplan seems to, that the Rav only adopted this attitude when he addressed the Agudah, but would have expressed

The Chazon Ish expresses a similar sentiment, decrying the "policy to divide the Torah into different parts – ruling on *issur v'heter* as one part, and ruling about matters in the 'marketplace of life' as a second part."¹⁸

Elaborating on the role of the true Torah leader as reaching beyond only informing others what Jewish law requires in any specific instance, Rav Yaakov Kaminetsky seems to feel that the true Torah leader will intuit what *Hashem* wants, as follows:

A practical example of zealousness not based on a strict reading of the Law...[arises] from the following question: What should a person do, if he has the choice to marry a Jewish girl who will not follow the laws of family purity or to marry a non-Jewish woman? Which is preferable? A scholar who has not served an "apprenticeship" with a major *posek* sufficiently, would certainly say that inasmuch as relations with a *Niddah* [a woman who has not immersed in a mikvah, in accordance with the laws of family purity] is [punishable] by Divine excision from the Jewish people [*karet*], [therefore it would be better to marry the non-Jew]. Nevertheless, the Rambam ruled differently...¹⁹

Rav Kaminetsky is indicating that there are meta-halachic considerations which the true Torah personality factors into the equation before issuing a ruling, considerations which are beyond the scope of even most rabbinic scholars, let alone the ordinary individual. As we pointed out in the metaphor of the doctor dispensing medical advice based on his intuition after years of study and practice, the scope of his conceptualization and the validity of his advice transcend the pedestrian advice

a different sentiment were he speaking to a Mizrachi convention.

18. Cited by *Lekach Tov, Devarim* II, p. 20. The same attitude is evident in *Ohr Elchanan*, II, p. 76.

19. *Emet LeYaakov, Parashat Vayechi*, p. 237.

of one's local G.P. Thus, too, *Daat Torah*. All students of Rambam grasp that this is the implication of Rambam's writing "*yireh li*", "it seems to me." That which "seems right" to Rambam is the product of a lifetime spent totally immersed in Torah, and it behooves all Jews to take his conclusions to heart.

A wonderful illustration of this ability to view an issue from a broad historic perspective can be seen in the development of the Bais Yaakov movement. Although traditionally Jewish girls had received all their formal Jewish training at home, after World War I Sara Shenirer *zt"l* became convinced that rudimentary training alone could not compete with the lure of modern society, which beckoned and beguiled young women to abandon their religious observance. Inspired by her conviction, she sought the support of the Chafetz Chaim in starting to educate girls in a school setting. That visionary Torah leader appreciated the immediacy of the problem and championed her cause – although there were other great Torah figures who did not yet, at that time, see the need. (Ultimately, virtually all agreed.)

If our discussion so far is the correct reading of what many of our greatest Torah figures have written for centuries, I believe it comes close to serving as a "working model" or perhaps even a definition of *Daat Torah*.

Limitations

In ancient times, the Supreme Sanhedrin in Jerusalem was empowered to issue rulings binding on all Jews. That was the authority of *Daat Torah* then. Nowadays, however, that prerogative no longer exists. In today's circumstances, any Jewish ruler or leader, or even posek, possesses only limited authority, confined to the area over which he presides, whether it be his students, or a congregation, a town, or even a state. No sweeping pronouncements by one individual can obligate all Jews to follow.²⁰

The Rivash in his responsa affirms this limitation:

A rabbi is [entitled to make pronouncements binding] only for his students or his congregation; and certainly, [it is not possible] for one rabbi to make decrees or ordinances for a country other than his own.²¹

In the light of all these limitations upon the authority of a rabbi, no matter how great, in matters of halacha, how much more does this apply to matters of *hashkafa* (ideology)!

The *Meshech Chochma*²² makes a very important point: Even a great and true Torah leader, whose vision of Judaism is clear and whose wisdom is profound, has to decide not only what is the right thing to do, but also – how the people will perceive it. *Meshech Chochma* states that failure to do this was the true "sin" of Moshe Rabbenu at Mai Meriva. Moshe Rabbenu had made it his policy never to act on his own, for fear that the people would ascribe magical or divine powers to him. However, when challenged by Korach, he deviated from that policy and declared that Korach would be swept away by a supernatural, unique punishment, as indeed he was. When the people at a later time accosted him for lack of water, he reverted to his previous mode, and was not pro-active in trying to get them water. Although his motivation was wonderful, it had a negative effect – the people complained, "See, for his own honor [against Korach] he goes out to fight, but for us, he sits back!" Even Moshe Rabbenu, the very embodiment of *Daat Torah*, erred in not realizing how his very fine policy would be misinterpreted by the Jewish people.

Therein certainly lies a profound lesson for Jewish leaders in all ages.²³

20. *Responsa Maharik*, No. 161.

21. No. 271.

22. *Parshat Chukat* 20:11, d.h. "Ha"ri Albo."

Expounding on the concept of rabbinic authority, Maharatz Chayyut concurs that the Sanhedrin was empowered to issue binding directives for all Jews, but he notes that was "only specifically when a matter was adjudicated in a conclave of all the sages who were then present in the *lishkat hagazit*" (the official meeting place).²⁴ He continues to add particularly that as far as the opinions of individual rabbis recorded in the Talmud, who may even have issued decrees for their own students or city, all these do not fall within the rubric of "do not deviate from their words", inasmuch as they were not formulated in an official conclave of all the scholars, which would apply to all Jews. In essence, that was the role played

23. Parenthetically, we may note that lack of confidence in their leaders' objectivity is a major deterrent to communal discipline. No matter how judicious and desirable rabbinic pronouncements may be, if people anticipate that certain [wealthy or powerful or well-connected] individuals are not pressured to adhere to standards demanded from others, they will balk at any attempt to set limits on their own behavior. As an example, if people were to get the impression that certain individuals are exempt from following recently-issued guidelines for limiting ostentation and excessive spending at weddings, there would be little incentive for others in the community to adhere to them. Or when a Jewish bookstore is picketed because it sells *sefarim* by Rav Kook, and no protest is heard from rabbinic leadership, it fosters a feeling that the rabbinic leadership kowtows to certain groups or individuals. Under the circumstances, lack of respect for *Daat Torah* abounds.

24. *Kol Kitvei Maharatz Chayyut*, p. 109 ff. He also cites Ran, Ramban, Rashba, Rambam (in *Moreh Nevuchim*), Maharik, and Ralbach as agreeing with his position. It is the opinion of *Sh"ut Yaavetz* 153 that once the rabbis have met in conclave and voted on a position, it is forbidden for the individual rabbi in the group to continue to maintain a divergent option. It should also be noted that such a conclave, although certainly desirable, does not possess the authority of the Sanhedrin of old. R. Chaim Ozer Grodzinski, in *Iggerot Achiezer* 286-288, is opposed to establishing a Sanhedrin at this time.

by the Great Sanhedrin millenia ago.

There are a few major problems with implementing *Daat Torah* in a practical sense – there is precious little confidence in the Jewish world nowadays that leaders, even rabbis, are always rendering objective, unbiased opinions; there is apprehension that in this deceitful, mercenary world, some untoward influence may impinge on the pure distillation of Torah knowledge which the leader possesses. As Chazon Ish concludes in one of his letters, "But nevertheless, the praiseworthiness of a Torah scholar does not qualify him, unless his fear of G-d takes precedence over his wisdom, and the Torah wisdom does not find its place in a closed heart."²⁵

Sad to say, there is a vague uneasiness in the hearts of many, who would like to see all the great rabbis acting in concert, when they confront the troubling phenomenon that some truly exceptional and able world-class *talmidei chachamim* are excluded from the periodic rabbinic councils, albeit their erudition and devotion seem exemplary. We have seen that no outside factors may be allowed to penetrate the decisions issued in the name of *Daat Torah*. Above all, *Daat Torah* must be fearless, unmoved by flattery, wealth, or public position.²⁶

25. No. 24.

26. Rav J.B Soloveitchik used to tell a wonderful story about his grandfather, Rav Chaim, which well illustrates why that sainted individual's decisions were accepted by all as *Daat Torah*: One day, the wife of a poor man died in the small village where Rav Chaim served as rabbi. Immediately, the *Chevra Kaddisha* began the necessary steps for her interment. Then, suddenly the wife of the wealthiest man in town also died, and he wanted her buried first, that day. But in that small town, the *Chevra Kadisha* could only handle one funeral a day, and therefore they turned to Rav Chaim to tell them how to proceed. Without hesitating, Rav Chaim ordered them to return to making preparations for the poor woman's funeral, which they did. The second funeral had to wait. Although that wealthy man made

The unpleasant suspicion that even great rabbis may not be above concern for "political correctness" or pandering to the wealthy, vitiates the preparedness of Torah-true Jews to follow pronouncements which are hailed as *Daat Torah*. When the process is perceived as tainted, the conclusions will not be accepted as true *Daat Torah*, even by those prepared in theory to be guided by it.²⁷

Qualifications For A Leader

Assuming that the ideology of following *Daat Torah* is correct, we have to turn to the other side of the coin and determine – whose opinion qualifies as *Daat Torah*? How do we recognize *Daat Torah* or the one who embodies it? Who decides which individuals are graced with *Daat Torah*?

Rav Chaim's life miserable for years afterwards, Rav Chaim told his family that, if it came up again, he would certainly do it again the same way.

In *Seridei Eish* IV, Rav Weinberger writes with great feeling how terrible it is when the Jewish people lose confidence in their leaders.

27. During the past year, a proclamation was issued by Torah leaders, calling upon all members of the community to accept restrictions and guidelines for expenditures when making weddings. The proclamation aroused a great deal of discussion, as well as debate whether this area was indeed the one most in need of correction – some suggested that it would have been far more important and worthwhile to place a limit on the costs of yeshiva education, which places a tremendous burden on thousands upon thousands of families. Be that as it may, the true test of this proclamation's efficacy as *Daat Torah* will be evident in about five years, when its impact will or will not be noticeable. It is the view of this writer that the factor determining whether this move to influence public behavior succeeds is really dependent upon the behavior of the signators themselves: the first time a wealthy or important individual flouts the guidelines but the Torah personalities who signed attend his child's wedding anyway – that will be the end of the project's efficacy.

Knowledge of the Torah, even outstanding erudition, although obviously fundamental, are not in and of themselves sufficient to qualify a *talmid chacham* as possessing *Daat Torah*.²⁸

After enumerating all the qualities a scholar must have to qualify for the Great Sanhedrin, Rambam lists the minimal requirements for a member of even the local *Beit Din* of three people: "Each one must have these qualities: wisdom, humility, fear [of sin], hatred of money, love of truth, and love for his fellow human beings."²⁹

The Meiri basically reiterates Rambam's description, adding that a person can only be appointed judge if he is "modest, humble, and tolerant", because he has to know how to treat each of the litigants who come before him in accordance with their temperament. Therefore, he warns not to appoint individuals so strong willed and arrogant that they will assume that the position is theirs for life.³⁰

Ramo addresses the minimal intellectual qualifications for the Torah leader: "He knows the give-and-take of Torah, and has a good understanding of most of the places in the Talmud

28. *Chagiga* 15b, *Moed Kattan* 17a: "If the teacher resembles an angel of G-d, then let [people] ask Torah from his mouth."

Shulchan Aruch 246:8. "A rabbi who does not follow in a good path, even if a he is great scholar and everybody needs him, they should not learn from him until he returns to the good."

29. *Hilchot Sanhedrin* 2:7,8.

30. Meiri, *Yoma* 22a. See also *Vayoel Moshe, Ma'amar Lashon Hakodesh*, #39.

This concept is beautifully explained by R. Chaim Volozhin in his *Nefesh Hachaim*, *Sha'ar* 4, *perek* 5: "The Holy One, Blessed be He, does not grant wisdom except to one who has wisdom. And whence comes the first wisdom? The explanation is that 'the first [i.e. primary] wisdom is fear of G-d', for the Holy One, Blessed be He, does not grant wisdom except to a person who has fear of G-d."

and its commentaries, and the rulings of the *Geonim*, and [study of] Torah is his only profession.³¹

Many will argue that the Ramo's definition of leadership scarcely fits anyone other than leading *poskim* or *Roshei Yeshiva*, and that they are the only ones who should be considered as leaders of a Torah community. Moreover, one could further argue that since only very few scholars are able to live up to this definition, only they should voice their opinion, and it would be wrong to allow less-qualified individuals to sit in the same conclaves with them.³²

Although this seems like a tenable criterion, the *Pitchei Teshuva* proceeds with the following addendum:

However, someone who has an official public position and many accept him to be a rabbi for them, and he establishes a *Midrash* and a *Yeshiva* – certainly he is to be considered a total *talmid chacham*, and he is even able to be a sole judge of the group if they accept his leadership, and he is permitted to judge.³³

31. *Yoreh Deah* 243:2. Ramo tenders this description as a means of assessing which persons engaged in Torah study are entitled to be relieved of their communal tax burden. The Chazon Ish, in *Emunah Ubitachon* III:24, extends this to a definition of what a *talmid chacham* should be. See also further in the Ramo as well as *Responsa Rosh*, 15, and *Choshen Mishpat* 60:1.

32. A somewhat related issue is the rationale for Orthodox rabbis not being willing to sit in one Council with Conservative or Reform rabbis, so as not to give the latter the appearance of legitimacy or equality. It is worth noting that many centuries ago, Maharal (*Derekh Chaim, Avot* 4:4) cautioned not to bestow authority nor give the title "rabbi" to anyone other than someone who will engender a love for heaven through his actions, since confusion may arise in the public perception when many people are given honorific titles, often quite indiscriminately.

33. *Pitchei Teshuva, Yoreh Deah* 243, end of No. 3. See also *Terumat*

The Rosh, in a different context, sets down criteria for determining which individuals who study Torah are entitled to exemptions from communal taxes. (By extension, these are the elite, the ones qualified to lay down *Daat Torah* for the community). He posits that only those who devote all their time and effort solely to the study of Torah, fulfilling the mitzvah of "pondering it day and night" should be excused from communal obligations..."However, a *talmid chacham* who does not spend his entire time only in Torah study...but also engages in work to earn a living...they expend their energy to get rich and ignore the Torah in order to collect a great deal of money" – they are liable to pay all communal fees, like anyone else.³⁴

However, the Rosh then proceeds to describe another communal figure – he is a "fit and proper person, G-d fearing, and establishes time to learn Torah every day and to teach it, and never departs from learning Torah except to do mitzvot, such as mediating between conflicting individuals, and doing favors and kindness, and rendering true and peaceful judgments – yet he asks that he be compensated in order to provide for the members of his household." Unlike the *talmid chacham* who has a regular job, this man would be exempted by the Rosh from communal taxes.

If we think about it, in this second scenario the Rosh has essentially presented us with the job description of many a pulpit rabbi, whose days are spent in listening and helping people with their problems, in teaching them the Jewish law, giving Torah and Talmud classes, supervising kashrut and mikvah for the community. In other words, he is a person who has learned for many years in yeshiva, he continues to learn and teach Torah daily, but he also has other involvements.

Hadeshen 342.

34. *Kellal* 15:7.

Does this imply that all practicing rabbis are entitled to a voice in the formulation of *Daat Torah*? Undoubtedly, many rabbis do not meet even the lesser, secondary list of qualifications tendered by the Rosh. But perhaps many in the rabbinate do indeed devote their efforts and energies to the betterment of the community and their voices should also be heard (although no argument is made here concerning the weight to be given their opinions).

The lack of clarity or agreement about whose opinion should influence communal Torah issues is at the heart of the numerous controversies which arise concerning *Daat Torah*. This is the central issue: who speaks for *Daat Torah* – and who decides who speaks for *Daat Torah*?

As an example of this vexatious problem, a while ago a group of Orthodox rabbis in one community sent letters to members of the congregations of other Orthodox rabbis in the same community (since the former considered themselves more learned and more pious than the latter), denouncing a lecture series in which some of the latter rabbis had participated, and urging the members of these congregations to put pressure upon their rabbis to cease participation in the lecture series. The latter rabbis protested, in the form of a long public letter, explaining why their actions were not only halachically justified but had even been sanctioned by the very Rosh Yeshiva who was nominally the rabbinic authority for those in the first group.

The major complaint in this public letter of the rabbis under attack warrants our attention, for it speaks directly to the issue we have raised. The public letter maintained that the other rabbis'

...real goal is to delegitimize our view of Torah and of Orthodoxy. As such, what is under attack is a religious world view (that follows faithfully in the footsteps of many great religious authorities in past periods of Jewish history), one that seeks to combine Torah in its fullest

embodiment with the best of modernity and contemporary culture....In short, it is not this or that local rabbi or institution that is in question, but rather how we as Jews might live in this day and age, committed to Torah Judaism...

The unwillingness to work together for the common good (we are talking about various types of *Orthodoxy*, all people committed to Torah and *Yirat Shamayim*) can lead to *chillul Hashem* and is certainly a disservice to the Jewish people. This returns us to the obvious but thorny question – who is entitled to an opinion on matters of importance to the Jewish community? Without doubt, this issue remains a great stumbling block in our days.

Furthermore – who is authorized to decide which persons qualify for membership in the rabbinic conclaves whose pronouncements will be binding upon all Jews?³⁵ It is disheartening when outstanding rabbinic figures and even *Roshei Yeshiva* are excluded from the "inner circle" of Torah community leaders making *Daat Torah* pronouncements, especially when there is no perceived reason for their exclusion other than possibly a slight variation on some ideological (non-halachic) point. When the prerequisites become so narrow as to exclude major Orthodox groups and/or their leaders, we have simultaneously narrowed the pool of those who are prepared to be guided by *Daat Torah*, inasmuch as they feel excluded for no discernible reason.

35. It would be naive to think that the membership of the Council of Torah Sages of Agudat Yisrael is a universally-accepted group or that its members include all the Torah scholars whose scholarship qualifies them to sit on such an august body. See the opinion of Rosh in *kellal* 15:7, for a remarkably broad definition of the community "elite" whose voices should also be heard.

Who Qualifies?

How do we know which rabbi is a true *talmid chacham* worthy of universal deference? Who will administer the test? Why was Rav Moshe Feinstein widely accepted as the *posek* for American Jewry, while others found their positions challenged? We are fortunate, to borrow a phrase from rabbinic literature, that even though Jews are no longer prophets, yet they are "children of prophets", and somehow in each generation there is a prescience of who is truly the exceptional *talmid chacham*, fit to be leader of the generation.

Maharit describes the generation's leader as, "all honor him because of his Torah knowledge and stand [in honor] before him."³⁶

In our own days, we see that there is somehow an intuition of who is truly outstanding. Albeit it is possible to fool some of the community some of the time, over time, the true *talmid chacham* is recognized and acknowledged.

To some extent, it is hard to pin down the specifics of whose opinion qualifies as *Daat Torah* in the modern world, inasmuch as there are many contenders for the title, some whose views are indeed steeped in Torah values. But many are not, and it is not always clear who is who... So many look the part, but are not the same on the inside as on the outside. So many claim their communal positions entitle them to be given equal hearing – and how are we to know what is in their hearts? Therein lies the core of the problem.

Inasmuch as there are such high standards for an individual to qualify as possessing *Daat Torah*, it is not difficult to criticize communal leaders as not being wholly qualified to express

36. *Choshen Mishpat* II,47. Maharit attributes this opinion to Rashba, Rif, Rosh, Rambam, and *Tur*.

Daat Torah. The danger, of course, is that under such circumstances, this serves as a facile rationalization for anyone who doesn't want to accept communal discipline. As the history of American Jewry attests, that way lies disunity and disaster.

Mistakes

Our rabbis through the ages have acknowledged that, despite their best efforts, mistakes do occasionally occur.³⁷ As Maharam Schick succinctly puts it, "it is part of the human condition to make mistakes at times."³⁸

So what does the Torah mean when it instructs us to follow the teachings of the Sages, and "not deviate right or left" (*Devarim* 17:11)? The *Sifre*, cited by Rashi, indicates that this directs us to obey all rulings of the supreme judges of the time, "even if they tell you that right is left and left is right."³⁹ Of course, this

37. See *Derashot HaRan*, 3,5,11.

38. Maharam Schick, *Yoreh Deah* 331. However, all authoritative voices agree that this can never apply to the halachic teachings of *Chazal*. Whatever is in the Gemara is true and has been accepted as such for more than a thousand years. Thus, when *Chazal* tell us that the biblical verse "an eye for an eye" means the *value* of an eye for the loss of an eye – that is correct, beyond any doubt. Whoever argues that point is simply not qualified to have any opinion in Jewish thinking. When the question of "Who is a Jew?" surfaces in Israel, anyone who does not acquiesce with *Chazal*'s rule that a convert must accept Torah and mitzvot – is simply beyond the pale of those who are fit to have a halachic opinion.

On the other hand, the rabbinic dicta termed *Aggadata*, according to many leading thinkers, are not always to be taken literally. See, for example, R. David Tzvi Hoffman in his *Introduction to the Commentary on Vayikra* and two letters by Rav S.R.Hirsch printed in *L'eylah*, Pesach 5749, pp. 30-35. See also the comments of Rambam in his *Commentary on Mishnah, Introduction to Perek Chelek*.

39. It is not my intention in this study to examine the *issur* of "do not deviate", for it has received extensive coverage in halachic

does not give the rabbis license to deliberately manipulate Torah directives to conform to their wishes, as Maharam Schick explains. The cryptic statement of *Sifre* "does not mean that they deliberately switch 'left' and 'right';... rather, they endeavor with all their strength to act 'for the sake of Heaven' to arrive at the truth. Nevertheless, with all this, it is part of the human condition to make mistakes at times."⁴⁰

But if we do interpret the Torah as telling us to follow the rabbis in all their pronouncements, then we have a big problem when or if these rabbis seem, retroactively, to have been mistaken. Such was the quandry faced by one correspondent of R. Eliyahu Dessler, concerning the almost universal failure of European rabbis to warn Jews to escape while there was still time before the Holocaust. On the contrary, many counseled their people that it was safer to stay in Europe – which may have compounded the tragedy for the Jewish people. To this glaring inconsistency in the ideology of *Emunat Chachamim* (trust in the Sages) and *Daat Torah*, Rav Dessler responded in his *Michtav M'Eliyahu*:⁴¹

Our Sages (*Chazal*) have already told us to follow the words of our rabbis, even "if they tell us about right that it is left and that left is right", and not to say, G-d forbid, that they certainly erred...but rather, [one should say that] my understanding is nullified like the dust of the earth in comparison to the clarity of their intellect and the Heavenly support they have (*siyata*

literature. See Rambam, *Hilchot Mamrim* 5; *Idem*, *Sefer Hamitzvot*, positive mitzvah 164; *Idem*, *Moreh Nevuchim* 3:41; Ramban, *Sefer Hamitzvot*, *shoresh I*; Kuzari, 43:39; *Sefer HaChinuch* 495-496; Ran, *Derasha* 12. It is interesting to note that the *Panim Yafot* extends this rule to any *Beit Din* whose authority is accepted by the entire Jewish people. See also *Torah Temimah*, *Devarim* 17:11.

40. *Tzelach*, *Berachot* 63, expresses the same sentiment.

41. I, pp. 75-77.

d'shemaya)...this is Daat Torah in the rubric of Emunat Chachamim. (emphasis added)

This is a very clear statement made by one of the seminal thinkers of our age, to whom it was evident that the outstanding rabbinic figures who lead the Jewish people are inspired by a deeper understanding than the ordinary, and, their whole hearts and minds being totally immersed in Torah, that renders their decisions more valid than those of ordinary people. Under those circumstances, he believes Jews ought to have faith in their leaders and follow them.

And yet – one finds it extremely difficult not to assume that their advice not to flee Europe while there was still time was tragically off the mark. It is a difficult decision to defend. Perhaps it is important to realize that a bad outcome doesn't necessarily prove the advice was bad. Sometimes the unexpected does happen, which no one could have predicted. Sometimes surgery must take place – but the patient dies of an allergic reaction to the anesthesia. That doesn't mean it was a mistake to perform the necessary surgery, it just means that we are not always in control of the consequences of our seemingly wise decisions or even that we can always foresee all the possible results.⁴²

42. The Gemara derives a very important article of belief when it addresses the issue of Torah leaders making mistakes. In *Gittin* 56b, the Gemara records the famous encounter between R. Yochanan b. Zakkai and the Roman general Vespasian during the seige of Jerusalem in 69 CE. At that time, when Vespasian heard that he had just been chosen as the new Roman emperor, he offered to grant R. Yochanan whatever he asked for. The rabbi requested that the Romans (a)spare the town of Yavneh and its yeshiva, (b)grant clemency for the *Nasi* Rabban Gamliel and his family, and (c) send for a doctor to heal R. Zadok, a saintly individual who had fasted for years. The obvious question is asked – why didn't R. Yochanan simply ask for the *Bet Mikdash* to be spared?! One of the answers tendered by the Gemara

Mulling over this paradox, Rav Hutner offered the following metaphor: Assume there are two people poised to jump from the roof of a building; horrified onlookers beg them not to. One agrees, and proceeds to take the stairs in order to reach the street, but trips and breaks his neck. The other man decides to jump, but happens to land on a mattress on the back of a truck! Although the outcome for him was miraculously good (and even more so in the face of what happened to the other would-be jumper), yet it would be ridiculous to blame the onlookers for giving bad advice. The advice was wise, and the one who listened to them indeed chose the right path. The guidance of our Torah leaders, Rav Hutner concluded, is just that – Torah-inspired wisdom, but it is not prophecy, and it is not fail safe. Our rabbis are wise men, not prophets.⁴³

Moreover, when two talmudic sages disagree, it does not mean one of them is wrong. The minority opinion in a halachic discussion is *not wrong*. There may be several acceptable options, but in actual practice, only one can become the universally followed mode – and that is the prerogative of the majority. This issue is discussed at length by the Ran in his commentary to the Talmud:⁴⁴

is most enlightening: the verse in Isaiah 44 says, "He turns wise men backwards *and makes their thinking foolish*." In other words, it was the Divine plan that the Temple be destroyed, and therefore *Hashem* deliberately prevented R. Yochanan from making the wise request which would have saved it from destruction.

We ordinary mortals, who are not blessed with the wisdom and insights of *Chazal*, cannot make such pronouncements regarding any specific episode or rabbinic advice. Nevertheless, we should take to heart the essential message that there are times when the Divine Will obscures an individual's wisdom.

In his *Mipeninai HaRav*, R. Herschel Shachter quotes Rav Soloveitchik as having expressed this sentiment also.

43. Heard by the author from the Rosh Yeshiva, Rav Hutner.

There is a very famous but troubling episode recorded in the Gemara about a session of the Sanhedrin, where the sages were called upon to decide whether a certain object was *tameh* or *tahor* (*Bava Metzia* 59a). The majority voted that it was *tameh*, in opposition to the opinion of Rabbi Eliezer, who was so sure that it was *tahor*, that he called upon Heaven itself to confirm his opinion as correct – "Let the walls of the Study Hall prove" that he is right. The Gemara records that in response to his demand, the walls of the Study Hall indeed began falling down. Nevertheless, the rabbis in majority refused to concede. Finally, a voice from heaven (*bat kol*) even declared that Rabbi Eliezer was right – and yet the others stuck to their guns! Ultimately, the ruling remained as the majority had declared it.

This begs the question – if Heaven itself protests against their ruling, how in the world could they, or would they, stubbornly stick to it? In his exposition, the Ran offers a fascinating answer:

Behold, they [the majority] clearly saw that Rabbi Eliezer's position accords with the truth more than theirs...nevertheless, they proceeded to act in accordance with their majority opinion, inasmuch as *their* understanding led *them* to consider it *tameh*. And even though they realized that *their* understanding is opposite of the truth, they did not want to declare [the object] *tahor* but rather...they stuck to their decision to declare it *tameh* because if they had changed their decision, it would have been going against Torah teaching which gives the final decision to the scholars of each generation to rule in accordance with their understanding. And that which they rule, that is what G-d commanded.⁴⁵

44. *Derashot HaRan* 3,5,11.

45. *Derashot HaRan*, No. 7.

The Ran goes even further in his *Derasha* 11:

The matter is as follows, as we have already written, that *Hashem yitbarach* ceded the ruling on these [halachic] matters to the minds/hearts of the scholars of every generation, and He commanded us to follow them. Thus it results that whatever they agree to on one of these issues, that is what Moshe Rabbeinu was commanded from the Mouth of G-d.⁴⁶ And we must also believe that even if they agreed on something and it is the opposite of the truth – which we know to be so because a prophet tells us – nevertheless it is not proper for us to deviate from the agreed teachings of our *chachamim*.⁴⁷

Based on the above, the author of *Ketzot HaChoshen* in his preface, as well as R. Moshe Feinstein *zt"l* in his preface to *Iggerot Moshe*, explain that the responsibility of the *talmid chacham* is to rule in accordance with his understanding of the Torah, even if objectively it may turn out to be the opposite of the truth!⁴⁸ The *posek* must rule in accordance with his own

46. This is also the opinion of Maharal, expressed in his *Gur Aryeh* commentary to Rashi on the verse in *Devarim* 17:11, which instructs us to follow and not deviate "neither to the right or left" from the teachings of our rabbis. "For He Who commanded in the Torah about prohibited or permitted [matters] also commanded this – 'do not deviate from whatever they teach you.' Consequently, [if a person follows] whatever they [the rabbis of his generation] told him to do, he is acting totally with permission, since that is what the Holy One commanded... to follow their words in whatever they teach us...and He also put in the Torah not to deviate from their teachings...so that even if they made a mistake, you are acting correctly and are fulfilling a mitzvah of G-d." See also Abarbanel's commentary to *Parshat Shoftim*, note 8.

47. P. 198, *d.h.*, "vehu amram."

48. The Ritva, *Eruvin* 13b, essentially concurs with this position. However, see Rashi in *Ketubot* 57a as well as *Chavot Yair* No. 192. Further sources include the following: *Sh"ut Rivash* 447; *Netziv*,

understanding of Jewish law; he has to proceed from a deep sense of reverence and fear of heaven, and do the best he can. Even so, concedes Rav Moshe, it is possible that he may err.⁴⁹

If we accept that the majority opinion is "right", or at the least that it expresses the normative ruling which Jews should follow, that is not to label the minority view as "wrong." The Gemara has already pronounced that "*eilu ve'eilu divrei Elokim chayim*," both the majority *and* the minority opinions are the words of the Living G-d. However, only one view can be the normative ruling which should be followed in practice; this means that even if the rabbis "err" in their ruling, they are not telling us something "wrong." This principle is one of the reasons why the Talmud records not only the majority conclusion of Torah debates but the minority positions as well. Thus, great rabbis can disagree, and they can both be true to Torah principles.

If this is true (and it is) in matters of halacha, it also holds true in areas of *hashkafa* – ideology, attitudes to other nations, and questions of the direction which the Jewish community ought to take.

Assuming There Is *Daat Torah*

If, as we have seen, it is conceded even by the most fervent proponents that mistakes can be made, why is the type of authority imputed to *Daat Torah* seen as a positive force in Jewish society? The rationale for establishing some kind of last word in the halachic process is really quite straightforward:

...[I]nasmuch as it is impossible for human society [to

Introduction to his Commentary to She'iltot; Introduction, Netivot Hamishpat; Introduction, Yam Shel Shlomo; Iggerot Moshe, Orach Chaim IV, pp. 13, 43.

49. Ramban tackles this point in his commentary to *Devarim* 17:11; however, it is difficult to discern what his conclusion is.

function] without their making one of them the head over the others, for them to heed his directives and to observe his decrees. For people's opinions differ from one another and they will never all agree on how to proceed on any matter, and therefore it will result in a cessation of projects. Therefore, it is necessary that they accept the views of one of them, whether it is good or bad, so that they may succeed and proceed with their activities. At times, his plans will result in great benefit, and at times the opposite. But all this is better than controversy, which leads to a total standstill [of any progress].⁵⁰

Even if the leadership may occasionally sanction a wrong turn, it is better than no leadership at all, which only results in strife and stagnation.

Sefer HaChinuch (mitzvah 78) upholds the principle of everyone's following the same procedures: Were there no such rule, everyone would follow the Torah as he perceived the truth, resulting in the destruction of society, with "many Torahs" rather than one Torah, for each person would be bound to follow the truth as he saw it. Therefore the Torah has established the principle of majority rule, to promote unity of Torah observance and preserve the community.⁵¹ This desideratum is so great that even if the leadership makes a mistake, the individual Jews who follow their instructions have done no wrong. As support for his thesis, the author notes that in case of error, it is the leadership, and not the community, which has to offer a penitential sacrifice.⁵²

50. *Sefer HaChinuch* 71.

51. This desirability of uniformity extends only to communal practice, but still leaves room for the individual to follow the *Daat Torah* which he chooses.

52. This ruling has nothing to do with the one in *Rosh Hashanah*

Perhaps we may say that in communal affairs, all must follow one decision, but in matters affecting only the individual, this is not so.

Dissent

To what extent is the *Daat Torah* expressed by a *talmid chacham* binding – are all Jews obligated to listen? Or perhaps only the specific group which he leads? Or is *Daat Torah* to be viewed only as wise counsel, with the individual retaining the option to reject?

Judaism does not generally demand intellectual subservience, and even a student may disagree with his teacher. While it is true that the Gemara says "whoever disagrees with his teacher, it is as if he were disagreeing with the Almighty,"⁵³ the intention here is not that he disagrees with his teacher's theses but rather that he tries to usurp his power or degrade his status. Even a great Torah scholar is not always right, and the serious student is entitled to challenge his reasoning.⁵⁴ As Ramo rules, "It is permitted for him [the student] to disagree with some ruling or teaching of his, if he can sustain his position and prove that the law is as he sees it."⁵⁵

24a, concerning an error made by the leaders, "even deliberately", because there it is speaking about a special rule concerning the sanctification of the New Moon.

53. *Sanhedrin* 110; *Yoreh Deah* 242:2.

54. The Talmud is replete with pronouncements of great rabbis, *Tannaim* and *Amoraim*, which are unhesitatingly challenged, dissected, questioned, and sometimes modified or outright rejected, whether by their contemporaries or later generations.

The *Seridei Eish* III:9 comments that nevertheless, one should approach the writings of earlier generations with a great deal of respect, working with the assumption that their Torah knowledge was far superior to ours. If something appears difficult, we should labor to understand it rather than discarding it.

Rav Moshe Feinstein often remarked that he welcomed challenges to his rulings, for he was happy to see that in the community "there are people full of spirit, who are neither afraid nor embarrassed to criticize."⁵⁶ In a responsum addressed to his grandson, he remarks, "It is certainly not possible to say that I am always right, but all [my rulings] were composed and written with hard work and effort to understand the truth. Therefore I hope that the Al-mighty, Who graciously gives a person understanding, will help me."⁵⁷

Rav Moshe Feinstein was once asked about the propriety of a *talmid chacham*'s opening a yeshiva in Bnei Brak, home of the Chazon Ish, when the rabbi knew that at times he would take positions disagreeing with the opinions of that legendary sage. With his characteristic sweetness of character, Rav Moshe assured him that there would not be any problem with this, inasmuch as he cannot imagine that the Chazon Ish assumed no one would ever disagree with him! Moreover, as a lover of the truth, the Chazon Ish would certainly have rejoiced if a *talmid chacham* revealed depths of Torah which he himself had not seen.⁵⁸

In this straightforward responsum, we see no hesitation about disagreeing even with a great sage, "albeit with proper

55. *Yoreh Deah* 242:3. In support of his statement, the Gra cites the talmudic report that Rav Nachman argued with his teacher, and there is also a report of Rebbe disagreeing with Rabban Shimon ben Gamliel. And *Tosafot, Bava Metzia* 4b, *d.h.*, "ain", indicate that Rabbi Akiva had students who challenged his opinion. *Terumat Hadeshen* 238 laconically notes that "this has been the way of [learning] Torah since the days of the *Tannaim*." *Pitchei Teshuva* further directs the reader to *Radvaz*, 495, and *Yaavetz* 1:5.

56. *Iggerot Moshe, Even HaEzer* II:11. See also *Iggerot Moshe, Yoreh Deah* I:101, p. 186.

57. *Ibid., Even HaEzer* IV:18.

respect." Which is to say that in the view of this great Torah luminary, *Daat Torah is neither monolithic nor infallible. Nowadays there is no single group of all great Torah leaders, such as the Sanhedrin of old. In practice, then, people may choose (in personal, not communal matters) to follow the directives of this gadol or that gadol*; the entire Jewish community is not bound to follow only one person, notwithstanding his great erudition, if there are others, equally great, who disagree.

There are of course many pitfalls inherent in the lack of one voice speaking for and directing all Jews (unfortunately, many of the dire possibilities are being realized in our communities today). If individuals are free not to follow the advice of Torah leaders, the practical reality is that anyone can rationalize whatever he wants to do; and that is very often not a good thing. On the other hand, everyone automatically following an ideology without stopping to think about it is also a troubling phenomenon.

Conclusion

This study has sought to investigate whether Judaism indeed includes an ideology of *Daat Torah*, and I believe we have demonstrated that it does. Perhaps it is not as omniscient nor universal as some would want, but I do not think there is too much room for doubt on that issue.

In a personal comment, however, I find it distressing that some of our leaders often do not appear to have much faith in the Jewish people.⁵⁸ Some of the pronouncements or actions

58. Unfortunately, this lack of confidence seems to extend at times even to individuals whose commitment to Torah values is unquestioned, even to individuals who have spent a lifetime immersed in Torah study. The implications are hard to rationalize.

taken in the name of *Daat Torah* bespeak a suspicion that the Jewish community in America today, even the yeshiva-trained, observance-committed multitudes, have to be kept within very narrow parameters, or else they will lose their commitment. Issues are portrayed in black and white, with no shadings. History is revised, books are censored, historic figures are idealized to the point of caricature, blanket prohibitions are issued – all seemingly out of fear that "if we give an inch, they will take a mile." It is painful to see that great scholars, even *Roshei Yeshiva*, whose opinions may be a little different, are not included in plenary councils of Torah leaders.⁵⁹ There seems to be an urgency to portray Jewish thinking as monolithic and beyond challenge.⁶⁰ Dissent comes close to being viewed as

59. *Ibid., Yoreh Deah* III:88.

59. Rav Kook and Rav J.B. Soloveitchik come to mind, as well as other more recent Torah figures.

60. Every student – and teacher – in yeshiva knows that the Zionists are "wrong" – but precious few could tell you why. They know it is "wrong" to demonstrate on behalf of the Jews suffering in Israel – but they don't know why. I see this as a failure on the part of Jewish leaders to discuss and explain the issues on a mature, intelligent level.

In the *Jewish Observer* of December, 1986, there appeared an article entitled "The Enigma of Moses Mendelssohn", which discussed the life and beliefs of the father of the Enlightenment. The article, which was highly critical of Mendelssohn, particularly because he failed to follow the advice and decisions of Torah scholars, noted however that although most of his children and grandchildren converted to other religions, he personally was an observant Jew all his life. This article caused such an "outray", that in the next issue of that periodical, the Chairman of the Board of the *Observer* printed a "mea culpa", apologizing for the article's positive mention of Mendelssohn, whose name is generally anathema in Orthodox circles. In addition, the *Observer* printed the comments of the Novominsker Rav castigating Mendelssohn; these comments, it noted, were expressed at the specific request of the Moetzes Gedolei Hatorah of Agudath Israel.

heresy.

And yet, on the whole, the Orthodox Jewish community today is blessed with many fine and committed people, who are not ignorant either of the Torah or of secular matters. I think they could handle serious discussions of communal issues, or appreciate in-depth explanations of certain aspects of current *hashkafa*. Most importantly, I think it is time we remembered that Judaism has never demanded a unitary view; dissent and open discussion have always characterized Jewish scholarship. Disagreeing with someone is not heresy, nor even rejection of *Daat Torah*. There are many who seek to be enlightened. They are not challenging *Daat Torah* – they just want to understand it better, so as to incorporate and integrate the thinking of Torah greats into their own approach to Jewish belief and practice.

The Second Day of Yom Tov for Israelis in the Diaspora

Rabbi Daniel Roselaar

A phenomenon of the current era is that, for a variety of reasons, an increasing number of Israelis are choosing to spend the *chagim* abroad, despite the fact that in ancient times vast multitudes of pilgrims would make the journey to Jerusalem to celebrate *Yomtov*. It is impossible for anyone with an appreciation of the concept of *aliyah laregel* not to be struck by the perverse irony of this situation, and doubtlessly much ink could be spilled regarding its religious and theological implications. However, the purpose of this article is practical rather than philosophical, and is merely to assess and examine the halachic considerations that apply to an Israeli who finds himself outside of Israel for any one of the festivals. Specifically, attention will be paid to the observance of the second day of *Yomtov*, which is not biblically mandated or observed in Israel, but observed by diaspora communities for historical reasons.¹

1. The Talmud (*Beitza* 4b) notes that in ancient times the diaspora communities were not always aware of the correct Hebrew date and thus observed a second day of each festival because of the doubt that existed. This tradition continued even once the calendar became fixed and the uncertainty no longer existed. The festivals addressed in this article are specifically Pesach, Shavuot and Sukkot. For reasons beyond the scope of this article, Rosh Hashanah is observed for two days even in Israel, while Yom Kippur is observed for only one day even in the diaspora. Likewise, the so-called “Minor Festivals,” e.g. Purim

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The Mishnah at the beginning of the fourth chapter of *Pesachim* (50a) establishes the principle that local customs and practices should always be adhered to. Even visitors who are present for a very limited period of time, and as such retain a commitment to their own modes of observance, must nonetheless attempt to blend in with local practices.² Among other instances, the Talmud (*Pesachim* 52a) discusses this principle in connection with a visitor from Israel, where (with the exception of Rosh Hashanah) only one day of *Yomtov* is observed. Rav Safra asked R. Abba if they would be obliged to keep two days of *Yomtov* were they to find themselves in such a situation, despite the fact that they had no uncertainty regarding the precise date of the festival. R. Abba's response was that they must adhere to local custom and keep two days of *Yomtov* if they are in a diaspora community where a second day of *Yomtov* is observed.³

It should be noted that there is considerable discussion

and Chanukah, are not observed for an extra day in the diaspora.

2. The halachic conclusion of the *sugya* is that one who is visiting another community must retain the stringencies of his own community as well as temporarily adopt the stringencies of his host community. Regarding halachic leniencies practiced by the host community, a visitor should exercise restraint, unless his reticence is clearly apparent. One who relocates to a different community is immediately bound by all their practices, whether more lenient or more stringent than those of his original community.

3. Significantly, the Talmud indicates quite clearly that if an Israeli is not in a settled Jewish community he is not required to keep the second day of *Yomtov* despite the fact that he is not in Israel, since no local customs exist to which he must conform. This ruling is also codified in the *Shulchan Aruch* (*OH* 496:3). Predictably, there is some discussion among the *Acharonim* regarding the definition of a settled Jewish community and whether it includes areas where Jews are not resident but where they work (self-contained hotels in areas with no other Jewish residents, etc.). Significantly, the terms actually employed

among *poskim* about who is regarded as a visitor in a community rather than a temporary or permanent resident. The *Shulchan Aruch* (496:3) addresses the issue in the very broadest of terms, stating merely that “residents of Israel who are abroad may not do *melachah* [prohibited work] on the second day of *Yomtov* if they are in a settled area, even if they intend to return,” and several important factors including the duration of the visit remain uncertain.

Basing their comments on the Radbaz and *Pri Chadash*, the *Magen Avraham* (496:7) and *Mishnah Berurah* (496:12) rule that one who moves to a new place of residence together with his family is immediately bound by the practices of his new and current locality, even though he may intend to return to his former place of residence at some point in the future. In such an instance, if the person discovers that it is to his advantage to remain in his new home – perhaps for economic, social, religious or other reasons – he is likely to do so despite his earlier intentions. Since his return from the new address must be regarded as uncertain, he is therefore obliged to adopt the practices of the local community. Conversely, they also comment that one who moves to a new place of residence with the intention of remaining there permanently must adopt local practices even if his family (and even his wife!) remain in his former home. In this instance, his firm decision to move his home on a permanent basis is more decisive than the fact that some of his most important assets remain at his former address.

Notwithstanding these rulings, a degree of ambiguity remains. On the one hand, it is obvious that an Israeli family staying as house guests or in a hotel in London for a two-week

by the Talmud – *yishuv* and *midbar* – make no specific reference to the absence or presence of Jews. Further details regarding this issue are addressed by Rabbi Y. D. Freed, *Yomtov Sheni Kehilchato* (Jerusalem 5748).

Pesach vacation retain their halachic status as Israelis, and Rav Moshe Feinstein (*Iggerot Moshe OH* 3:72) rules that a couple who are abroad for an extended vacation which include attending their son's wedding should keep only one day *Yomtov*. But on the other hand, the status of a family living in rented accommodations in New York for a one or two year period of *shlichut*, or while undergoing medical treatment, is less obvious. While it is their intention to return to Israel at the end of a specific period of time and that is where the bulk of their assets remains, it is by no means inconceivable that they will decide to remain abroad for a longer, perhaps indefinite, period.

Notably, Rav Feinstein seems to indicate in several responsa that a degree of subjectivity exists, and where there are compelling arguments to suggest a return to Israel – and in particular if the motivation for spending time abroad was *not* financial – he rules that only one day *Yomtov* should be observed, even if a whole family finds itself abroad.⁴

However, Rav Ovadia Yosef (*Yechaveh Daat* 3:35) rules categorically that Israelis who are abroad for an extended period of time must observe two days *Yomtov* even if they are contractually obliged to return to Israel after a certain amount of time. To some extent he follows the approach of the *Aruch Hashulchan* (496:5) who rules that such people should observe just one day *Yomtov* only if they intend to return to Israel “within a short period of time,” and suggests that anyone remaining abroad for a year or more must keep two days *Yomtov*. Apparently the degree of permanence indicated by being resident for such a substantial period of time supersedes any intentions – however realistic – to return, even at some specific future date.⁵ Further confusion can be added to these varying

4. *Iggerot Moshe OH* 3:72 & 75; *OH* 4:109.

5. See also *Minchat Yitzchak* 4:1-4.

factors when someone owns homes both abroad and in Israel and is equally domiciled in each place. Rav Chaim David Halevi (*Aseh Lecha Rav* 7:33) addresses this increasingly prevalent situation and concludes that when in Israel the person should observe just one day *Yomtov* and when abroad he should observe two days.⁶

The Talmud phrases the requirement to observe the second day of *Yomtov* in a negative sense, stating only "*bayishuv assur*", that work may not be done in a [Jewish] settlement. The implication of such a formulation, which is apparent in the talmudic commentaries and also *Shulchan Aruch*, is that such a visitor does not need to actively observe the second day of *Yomtov*, but must merely abstain from engaging in prohibited activities. Thus, though he may not do any *melachah*, he is apparently not required to recite *Yomtov kiddush* or any of the other festival prayers.⁷ Such a distinction is unsurprising, since the Talmud indicates that he is observing *Yomtov* only in order not to cause offence – and thus must refrain from *melachah* – yet he can hardly recite the *Yomtov* prayers when it is not actually *Yomtov* for him. The remainder of this article will endeavour to establish the precise parameters of the prohibition against *melachah*, as well as whether any degree of active *Yomtov* observance is in fact required.

Commenting on the prohibition against *melachah*, *Tosafot* (*Pesachim* 52b s.v. *Bayishuv*) consider it to have the very broadest possible implications and note that work should not be done even in private. They explain that the very concept of privacy

6. In fact, Rav Ovadia Yosef cites earlier authorities who address similar situations where a person not only owns homes in Israel and abroad but also has a different wife in each home!

7. However, see further in this article regarding an Israeli engaged as a *chazzan* for the *chagim* by a diaspora community.

is alien to the notion of work, which they regard as a public activity by definition, and that it is impossible that others will not be aware of what is going on.

As stated, these comments are of course rather broad in their implications and appear to discount the reality that albeit a significant number of different *melachot* – including the various categories of prohibited agricultural activities (e.g. plowing, sowing, harvesting, etc.) and construction work (e.g. building and demolition) – cannot usually be done in private, many other forms of work, such as needlework and writing, can be done without other people becoming aware. Indeed, there will also be instances wherein even “public” *melachot* can be done privately, e.g. watering a houseplant.

In order to resolve this difficulty, it may be reasonable to suggest that *Tosafot* have adopted one of two possible alternatives: a) Since some forms of *melachah* cannot be done in private, an all-inclusive prohibition was enacted so as not to differentiate between different categories of work, and even different ways of doing the same form of work, particularly since the respective definitions of “public” and “private” are somewhat subjective and variable; or b) specifically those forms of work that cannot be done in private are proscribed, but other *melachot* may indeed be done in private, and presumably, the permissibility of any particular action must be assessed on its own merits. This second, less inclusive, alternative is suggested by the *Ran*⁸ as a possible interpretation of the talmudic ruling that work should not be performed.

A third explanation of the prohibition is advanced by the *Baal Hamaor* (ad loc.). As a general rule he maintains that a visitor is indeed permitted to retain his halachic leniencies, provided that it will not cause offence or *machloket* (controversy)

8. On *Rif*, *Pesachim* 17b s.v. *V'Rabbah*.

in his host town.⁹ He is even of the view that if the local residents include Torah scholars, he may practice his indigenous customs in public. However, the case under discussion is treated as an exception because of the widespread observance of the second day of *Yomtov*. Whereas many other customs and practices are limited to certain communities, he notes that the second day of *Yomtov* is universal in nature and is observed by all diaspora communities without exception. Despite the fact that the local residents will doubtlessly be aware of the fact that it is halachically legitimate to observe only one day of *Yomtov* (it can hardly be described as an obscure practice since that is all that is mentioned in the Torah), a visitor is nevertheless required to conform with the local practice because of the overwhelming dominance of the practice.¹⁰

The *Shulchan Aruch* (OH 496:3) rules that residents of *Eretz Yisrael* may not do work on the second day of *Yomtov* when abroad, but reflects the ambiguity present in the Talmud and fails to clarify whether this applies to all forms of *melachah*, or just to *melachah* that is done in public. Though the *Taz* adopts the lenient position of the *Ran* and allows work to be done in private, this is a lone halachic view. The overwhelming consensus among the *Acharonim* is that all forms of *melachah* are prohibited.¹¹

9. In fact, he actually *requires* that a visitor should retain his own practices and traditions as a function of the verse "*Shema beni musar avicha v'al titosh torat imecha* – Listen my son to the advice of your father and do not abandon the Torah of your mother" (Prov. 1:8).

10. From a contemporary perspective it may be germane to add that if Israeli visitors were to be observed not keeping the second day of *Yomtov*, it might undermine the importance of this rabbinic institution and give added impetus to those seeking to dispense with this time-hallowed tradition.

11. *Mishnah Berurah* 496:9.

Notwithstanding the above, there remains some limited discussion regarding certain forms of *melachah*. Rav Moshe Feinstein (*Iggerot Moshe OH* 4:104) relates to the question of whether electric lights may be turned on and suggests that since the provision of illumination is not prohibited on *Yomtov*, and since (according to many authorities) it is only rabbinically prohibited to turn on lights on *Yomtov*, an Israeli abroad might be permitted to do so on the second day of a festival. Acknowledging that this would nevertheless remain problematic since it is difficult to turn lights on without anyone else becoming aware of it, as well as the fact that the *poskim* do not appear to differentiate between biblically and rabbinically prohibited actions, Rav Feinstein suggests that since most Orthodox Jewish homes now have a time-switch installed, an onlooker might assume that that no transgression had occurred and that the lights had come on automatically. However, his comments seem to be limited to a series of halachic musings and he does not appear to issue a definitive ruling on the matter.

A further exception to the prohibition against *melachah* that generally applies even to an Israeli visitor is the requirement for an *eruv tavshilin* if the second day of *Yomtov* falls on a Friday. Normally, in order to permit the preparations for Shabbat to be executed on *Yomtov*, an *eruv tavshilin* must be prepared before the onset of the festival. However, the *Magen Avraham* and *Mishnah Berurah* rule that since an Israeli visitor is not absolutely required to observe the second day *Yomtov*, and does so only in order to conform with local practice, he need not prepare such an *eruv tavshilin*, particularly since an onlooker watching him prepare for Shabbat will not be aware of its absence.

With regard to the extent to which *Yomtov* has to be actively observed, as previously noted, there is no indication in the

Talmud or *Shulchan Aruch* that any such requirement exists.¹² However, many *Acharonim* do rule that in the public arena one must behave as if it is actually *Yomtov* – in order that there should be no opportunity for offence or *machloket*. Thus the *Chaye Adam* (103:4) rules that a person in such a situation should wear *Yomtov* clothes and attend services in shul. Since he is also required to lay *tefillin* he should do so before going to shul (reciting *Shema* at the same time), and while in shul he should even take measures to ensure that his lengthier *Amidah* prayer is not immediately apparent to others.¹³ Notably, Rav Moshe Feinstein (*Iggerot Moshe OH* 3:92) observes that if there are several different shuls in the area, then one need not attend services, since his non-appearance in any given synagogue will not automatically lead to the conclusion that he is not observing the second day of *Yomtov*. Indeed, he is also of the opinion that if only nine non-Israelis are present, an Israeli may be counted as the tenth person in the *minyan* so that a full *Yomtov* service may be conducted (*Iggerot Moshe OH* 4:106). Though under these circumstances a group of Israelis who find themselves in the same locale may be inclined to organise a separate weekday *minyan*, Rav Zvi Pesach Frank (*Har Tzvi* 2:78) rules against

12. Addressing this issue from a meta-halachic perspective, *Shulchan Aruch Harav* (*Siman 1*) rules that the nature of the sanctity of the day is such that it affects each location and thus the second day of *Yomtov* must be observed in its entirety by all who find themselves outside of Israel, irrespective of the duration of their stay abroad. See also *Minchat Yitzchak* 5:43.

13. Rav Sh. Z. Auerbach ruled that the *Amidah* should also be recited in private while wearing *tefillin* before going to shul (*Shemirat Shabbat Kehilchata* Chap. 31 footnote 89), though it appears that Rav Moshe Feinstein (*OH*:3:72) concurred with the view of the *Chaye Adam*. Dayan I. Weiss (*Minchat Yitzchak* 9:39) ruled that a visitor from Israel should *daven Shacharit* in private on the day he considers it to be *Chol Hamoed* in order to recite both the *Shema* and the *Amidah* with *tefillin*, and would presumably concur with Rav Sh. Z. Auerbach in our instance.

such a practice since it implies an active disregard for the second day of *Yomtov*.¹⁴

The question of whether an Israeli *chazzan* may lead services on the second day of *Yomtov* is also addressed by the *poskim*. Unsurprisingly, the general halachic opinion appears to reject such a possibility¹⁵ on the grounds that since it is not *Yomtov* for the *chazzan* he can hardly recite prayers declaring that it is *Yomtov*. However, some authorities suggest that a *chazzan* employed to lead *Yomtov* services should observe two days of *Yomtov* and may therefore lead the services on the second day also.¹⁶ In a somewhat similar vein, the question of whether an Israeli may be called to the Torah on the second day of *Yomtov* is also addressed – the *Shaarei Efrayim* (8:97) rules that it is not permitted, while the *Shevut Yaakov* (1:40) rules permissively. Similarly, the question of whether an Israeli Kohen should participate in the *duchanning* ceremony on the second day *Yomtov* is also discussed – according to the *Aruch Hashulchan* (496:5) he should not. If circumstances dictate that he must, he should refrain from reciting the preliminary *bracha*, chanting

14. Rav Frank does suggest that if the second day of Shavuot (or the final day of Pesach) falls on Shabbat, it may be permissible for Israelis to hold their own services since their “disregard” of the sanctity of the day is less apparent, but he does not reach a firm halachic conclusion. However, it should also be noted that in a responsum (*Avkat Rochel* #26) possibly written by Rav Yosef Caro, the author appears to indicate that there are good grounds for allowing a public prayer service on *Yomtov* that is at odds with local custom, on the basis that the previously mentioned notion of “*machloket*” is only applicable to *melachah* because of the gravity of transgressing *Yomtov* in that connection.

15. See *Shaarei Teshuvah* OH 496:2.

16. See Rabbi I. Jakobovitz, *The Timely and the Timeless* p.307-8, who cites views that such a *chazzan* must observe the second day of *Yomtov* since the nature and requirements of his employment define him as a diaspora resident.

only the Scriptural verses.¹⁷

Rav Moshe Feinstein further concludes (*Iggerot Moshe OH* 3:72) that *Yomtov* candles should be lit by the visiting Israeli on the second night of the festival, since refraining from lighting would constitute public non-observance of *Yomtov*, though the *bracha* should obviously be omitted. In the same responsum he notes that for the same reason an Israeli who is abroad over Pesach should participate in the second Seder (omitting *kiddush* and the specific *brachot* for *matza*, *marror*, as well as *Asher Gaalanu* and *Yehallelucha*).¹⁸ However, Rav Sh. Z. Auerbach is cited as holding that if one is in a closed family environment it is not necessary to actively participate in the Seder rituals since the other participants are aware of why he is abstaining.¹⁹

At the other end of the festival, the question of whether or not *havdalah* should be recited over wine at the conclusion of the first day of *Yomtov* is also a point of dispute among *Acharonim*. *Kaf Hachayim* (496:36) and others rule that it should be recited in private, but Rav Moshe Feinstein (*Iggerot Moshe OH* 3:72) and others rule that it should not be said at all, though if possible one should listen to someone else recite it on the following evening. *Poskim* also note that *chametz* must not be consumed on the eighth day of Pesach, even in private.²⁰

In conclusion it may be stated that there are significant

17. See also *Shaarei Teshuvah OH* 496:2.

18. He also notes that it is not necessary to consume a full *kezayit* of *marror* and recommends that he “recite” the *brachot* over the second and fourth cups of wine by responding *Amen* to another’s *brachot*. In a subsequent responsum (*OH* 5:24) he indicates that these rules apply only if one is in company of others who are observing the day as *Yomtov*.

19. See *Yomtov Sheni Kehilchato* Chap. 3 note 38.

20. *Aruch Hashulchan* 496:5.

halachic issues which must be confronted by Israelis who are absent from Israel for the *chagim*. As this article has sought to demonstrate, while there is a broad halachic consensus that the "local" sanctity of *Yomtov* should not be violated in any way even in private, a certain amount of discussion exists with regard to the extent and circumstances under which such a visitor is required to actively observe and participate in the rituals of the second day of *Yomtov*.

Letters

To the Editor,

Kol Hakavod to Rabbi Daniel Stein for addressing an important issue ("Halachic Aspects of Visiting the Temple Mount," Sukkot 5763, number XLIV). Over a third of his article was devoted to the frequently neglected obligation to tear *keryah* over the absence of the *Beit Hamikdash*. After establishing the talmudic nature of the obligation, clarifying over what one tears, and under what halachic rubric this obligation is subsumed, he offers "Methods of avoiding the obligation to tear *keryah*."

Rabbi Stein discusses essentially two methods of avoiding *keryah*: a) scheduling a contrived time for the visit to the *kotel* and b) swapping garments. He only briefly considers whether "avoiding the obligation" is a good thing. In general, one is obligated to tear upon seeing the *kotel* (or whatever the *mechayeiv* is) after a lapse of 30 days. If one saw the *kotel* but did not tear, either rightly or wrongly, should his 30-day clock "reset" or must he tear the next time he sees it, even if it is the next day? Rabbi Stein does not raise this issue of "resetting the clock" at all.

Some people assume that by visiting the *kotel* on *Rosh Chodesh* they are not obligated to tear. In a particular instance, Rav Aaron Soloveitchik explicitly instructed his son Rav Chaim to tear *keryah* on *Rosh Chodesh Nissan* (personal communication). Rav Aaron Soloveitchik further expressed his disapproval of those who try to avoid this mitzvah.

Rabbi Stein discusses the "exemptions" of *erev Shabbat* and *Shabbat*. He points out Rav Moshe Feinstein's (*Iggerot Moshe* YD 3:52:4) hesitation to allow any exemption. Rav Moshe Feinstein also commented that if one saw the *kotel* on *Shabbat*

or Yom Tov (and thus did not tear), it seems obvious to him that it does not reset the clock, and even within 30 days one must tear upon seeing the *kotel* again.

A first *kotel* visit on *Chol Hamoed* is also the source of contention. *Levush Mordechai* (*Mahadura tinyana* OC:173) was in doubt whether that exempts one from tearing. *Minchat Shlomo* (73) says not to tear on *Chol Hamoed*. Rav Y.M. Tuketchinsky (*Ir Hakodesh v'hamikdash* 3:5) says that he heard from the Sephardic authorities who were familiar with the ancient custom that the practice is to not tear on *Chol Hamoed*. Rabbi Akiva Yosef Schlesinger (*Mishnato Shel Rabbi Akiva*) concludes not to tear on *Chol Hamoed* but that if one is still in Yerushalayim at the conclusion of the holiday, he should tear at that time.

There is a common misconception that by wearing someone else's shirt, one becomes exempt from tearing. Rabbi Stein noted that Rav Shternbuch viewed this as ineffective, and pointed out that Rav S.Z. Auerbach and Rav Y.Y. Kanievsky were opposed to people avoiding the obligation in this manner.

Rav Shmuel David Munk (*Pe'at Sadchah*, Haifa, 5735, #57) addressed this issue at length. He compares this tearing to the law of *keriyah* for a parent. If a person is on his way to visit his sick parent, borrows a garment, and then finds the parent has died, he is required to tear *keriyah* on the borrowed garment (*Shulchan Aruch YD* 340:34). It is only if he borrowed the shirt planning to visit a healthy parent that he may not tear his friend's garment. In the case of the *kotel*, a place with a known obligation of *keriyah*, a borrowed garment would thus clearly not exempt one from tearing.

There are several other exemptions, some more legitimate than others. If a couple visits the *kotel* during their first week of marriage, they are exempt from tearing *keriyah* (*Nisuin K'hilchatam*, 15:66). There is a custom, with no clear basis, that those who live in Yerushalayim do not tear upon seeing the *kotel/har habayit* even if they have not seen it in more than 30

days (*Sefer Eretz Yisrael* 22:9). This is true even if they have never torn in their lives. However, if such a person leaves Yerushalayim for more than 30 days, he becomes like a non-Jerusalemite and upon returning and seeing the *kotel* is obligated to tear. It is not clear if this exemption applies to those who live in the newer, more distant suburbs. *Piskei Tshuvot* (published 5757) 561, note 23 (vol. 6, page 145) suggests that this exemption does not apply to them. In a sweeping and novel exemption, Rav Avigdor Nebenzahl (personal conversation) exempts anyone who could in theory have been at the *kotel* within the previous 30 days. If they were able but did not, then clearly the pain of the *churban* is not burning within, and it would be inappropriate to tear. The most liberal position is reported by Rav Benny Eisner (personal conversation) who testifies that Rav Tzvi Yehudah Kook ruled at the *kotel* to him personally that with Israeli sovereignty on the *Har Habayit* there is no longer an obligation to tear.

Following the halachic analysis, Rav Munk presents a philosophical understanding of the tearing, and how tragic it is that there are those who seek to exempt themselves. One is obligated only if he has not seen the site in 30 days, because presumably at that point one will again feel the anguish of the loss that God and the Jewish people have suffered and will want to express his pain through tearing. If one does not feel such pain it is his shortcoming, and, Rav Munk suggests, maybe the tearing will awaken some feelings of Jewish solidarity within his heart. However, one who seeks to remove this obligation is spurning the remnant of the Temple and removing himself from those who mourn its destruction. Such people, he states, show that their mourning on Tisha B'av, the three weeks, and other times is no more than show and habit. No leniency should be looked for. Especially nowadays, he writes, an effort should be made to reinforce these laws, so that we will be privileged to see the rebuilt Temple in all its glory.

There were those who upon visiting Jerusalem for the first

time did not eat meat or drink wine that entire day (*Kreiti u'plati* cited in *Ir Hakodesh v'Hamikdash* 3:17:1:5), and here one is trying to save a shirt! The *Mishnah Berurah* (561:6 in the name of the *Bach*) writes about the need to mourn and lament the vacuum felt at the *kotel*. In summary, most of the ruses do not work, and one visiting the *kotel* for the first time in 30 days, certainly one coming from overseas, should not attempt to avoid the pain of our national mourning and should rend his garment.

Going to the *kotel* evokes complex and contradictory emotions. The joy that we can approach this remnant of the *Beit Hamikdash* and use it as a means of becoming nearer to God is a true happiness. But the overriding sense is one of sorrow. Facing the *kotel*, standing within a 30-second walk from the *Makom Hamikdash* and yet not being able to ascend and worship properly is like driving a knife through the soul of a Jew. It drives home that we and the *Shechina* are truly still in *galut*. Visiting the *kotel* should really generate a sense of personal *aveilut* over the *churban*. It should inspire one to beseech God to terminate this 2000 year bitter exile and restore the *Beit Hamikdash* and its service.

RABBI ARI Z. ZIVOTOFSKY

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To the Editor:

The last issue of the *Journal of Halacha and Contemporary Society* featured an article that I wrote on "Confronting Child Abuse" (Vol. 44, pp. 31-50). The editor has asked me to clarify an important issue. What is the halachic position regarding a rumor about an individual? If there is a rumor that an individual has committed a serious offense, may this person be suspended from his position of employment? If a teacher, for example, has been accused of molesting a child, may he be suspended?

An article in *Techumin* (Vol. 16, pp. 340-8), by Rabbi Ch.

Shlomo Sha'anan examines this question. When a public figure is rumored to have committed a serious offense, it would seem prudent to suspend him from his position until the matter can be resolved. Is there a halachic basis for such action?

Rambam (*Responsa, siman* 111) and Rashba (*Kol Bo, siman* 147) were asked about a *chazan* who was rumored to have been involved in sexually inappropriate behavior. Absent two witnesses, they rule that the *chazan* may not be suspended from his position based on a rumor. The ruling of the Rashba is cited by the Ramo in his *Darkei Moshe* (end of *siman* 53) and in his gloss to *Orach Chaim*, 53:4. The *Knesset HaGedolah* writes that this applies to all people who serve the public, such as a king, a rabbi, a *chazan*, a *shochet*, or a *gabbai*. Suspending someone, even a public figure, based only upon a rumor, would further damage the person's reputation by giving credence to the rumor (*Beit Yosef* and *Mishnah Berurah*).

Ri Migash (*Responsa, siman* 95), however, writes that if there is a persistent rumor, it is appropriate to remove him from his position since the persistence of the rumor lends credence to its veracity.

Rabbi Eliyahu ben Chaim (*Ranach*, 1530-1610, *Responsa Mayim Amukim*, 2:42) quotes *Chacham* Rabbi Chaim Pizaro who prohibits suspending someone without clear testimony from two witnesses. *Chacham* Pizaro is concerned that the woman involved in the rumored sexual liaison will have her children labeled as *mamzerim*. *Ranach*, however, disagrees and is of the opinion that the *chazan* may be suspended from his position based upon a persistent rumor (*kala delo pasik*). *Magen Avraham* (53:7) and *Mishnah Berurah* share the position of *Ranach*, that in the case of a persistent rumor, even a single individual may demand the suspension. *Eshel Avraham* (s.k. 29) explains that this case involves a persistent rumor (*kala delo pasik*) that allows the *chazan* to be suspended, unlike the type of rumor (*kol stam*) to which the Ramo was referring (*se'if* 25), where we do not

suspend the *chazan*. The *Machtzit HaShekel* (s.k. 7) goes even further, stating that a persistent rumor is equivalent to having witnesses.

A persistent rumor is defined as a rumor that has been widely accepted, that has not been circulated by a person's enemies, and that persists for a day and a half (*yoma u'palga*).

In summary: Regarding a persistent rumor, there are differing opinions: *Ri Migash*, *Ranach*, *Magen Avraham* and *Mishnah Berurah* permit suspension, while *Rambam*, *Rashba* and *Rabbi Chaim Pizaro* do not.

How can we suspend someone solely on a rumor? After all, we are causing him a monetary loss. *Ranach* replies that the individual involved should not have allowed himself to be in a questionable position. If the manner in which he conducts himself gives credence to the rumor, then he has only himself to blame. The *Bi'ur Halacha* states that the *chazan* should have been more careful to conduct himself in a manner that would not have allowed such rumors to begin.

Rabbi Sha'anan points out that any individual who holds a public position and is rumored to have committed an offense that by its very nature would preclude him from continuing in his position, (e.g. an offense of immorality), may be suspended (see *Responsa Zichron Yehuda*, *siman 87* and *Darkei Teshuva*, *Y.D.*, *siman 1*). A *Rebbe*, a teacher, a youth leader or counselor would be in the category of public positions where the community has expectations of a certain level of behavior, and there are *poskim* who do permit suspension based upon a persistent rumor. We are permitted to suspend an individual, thereby causing him a monetary loss, because it was his own behavior which caused the suspicions to be aroused. When an individual's behavior is not a contributing cause to the rumors, he may not be suspended, cautions Rabbi Sha'anan.

Positions that do not carry such a high level of expectation

by the community, might have more stringent requirements for suspension.

STEVEN OPPENHEIMER, D.D.S.