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

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

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

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Reciting The Hallel on Yom Haatzmaut

Rabbi Ralph Pelcovitz

In recent years two holidays have been added to the Jewish calendar which are celebrated by many Jews in Israel and throughout the world. We use the word "many" advisedly since there are also a large number of religious Jews who do not mark these two days as *Yomim Tovim*. Nonetheless, to those who want to mark *Yom Haatzmaut* (the fifth day of Iyar), and *Yom Yerushalayim* (the 28th day of Iyar) by special prayers of thanksgiving, the question of reciting the *Hallel* is a most pertinent and important one which has been addressed over the years by a number of authorities and merits consideration in a journal such as this, for much of the material is not available to the English-speaking reader nor have these responsa been gathered together in one essay. The purpose of this article is to examine the entire question of reciting *Hallel* on these days in the hope that the issue can be clarified in an intelligent and scholarly fashion, so that each person can at least consider the arguments for either position.

Our intention is to present the primary sources from the Talmud regarding *Hallel* in general. Specifically, we will discuss the days when *Hallel* is to be said — the conditions under which our Sages established these days as well as the exceptions. We will also

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examine the origins of *Hallel*. We will then proceed to cite various latter-day authorities who have addressed themselves to the question of whether *Hallel* should be recited on *Yom Haatzmaut* and *Yom Yerushalayim*.

Days When Hallel Are To Be Recited

The Talmud in *Taanit 28b* states "On 18 days in the year, the individual worshiper completes the *Hallel*; and they are the 8 days of Succot, the 8 days of Chanukah, the first 2 days of Pesach and the first 2 days of Shevuot". Our custom of saying half *Hallel* on Rosh Chodesh and the last days of Pesach are not included since these are not mandated by the *Takanat Ha'neveim* which is the basis of reciting the *Hallel* on the days mentioned in *Taanit*. This same Gemara appears in *Mesechta Arachin* (10a). There the Talmud elaborates on the conditions which dictate those days on which *Hallel* are said, explaining why, for example, it is not recited on Shabbat or Rosh Chodesh as well as Rosh Hashanah, Yom Kippur and Purim, for it would seem most logical that if *Hallel* is to be recited on sacred days or in commemoration of miracles, that the recitation of *Hallel* should be extended to these days as well. It is, therefore, important for us to trace the conditions which our Sages considered prerequisites for the recitation of the *Hallel* which would explain these exceptions.

Conditions For Saying Hallel and Exceptions

The Talmud in *Arachin* (10b) discusses first the difference between Succot and Pesach. The days of Succot are differentiated from one another in respect of the *korbanot* (sacrifices) which are brought on the various days, whereas the days of Pesach are not. Since the *korbanot* on Pesach were uniform, only the first day warrants the complete *Hallel*, whereas during the balance of the holiday, only half *Hallel* is recited. The Talmud then asks a most pertinent question, "Let it then be read on Shabbat which *is* distinguished by its sacrifices?" The Talmud answers that Shabbat is not called *Moed* (a festival); and, continues the Talmud, if you will ask why then is *Hallel* not recited on Rosh Chodesh which *is* called a *Moed*, the answer is that Rosh Chodesh is not sanctified as

to the prohibition of labor. To recite *Hallel* one must meet the requirements set by the verse in Isaiah, "You shall have a song as in the night when feast is hallowed," which means, only the night sanctified towards a festival requires a "song"(i.e. *Hallel*), but the night which is not sanctified towards a festival does not require a song.

The Talmud then proceeds to anticipate three logical questions. Why is *Hallel* not recited on Rosh Hashanah and Yom Kippur, why is it recited on Chanukah, and why is it not recited on Purim? In answer to these questions the Talmud states that on Rosh Hashanah and Yom Kippur it is unseemly to say *Hallel* for is it possible that "The King sits on the Throne of Judgment with the books of those destined to live and those destined to die open before Him, and Israel should sing a song?" As for Chanukah, when neither of the aforementioned conditions apply — namely it is neither a *Moed* nor is labor prohibited, and yet *Hallel* is said — the answer perforce is that *Hallel* is recited to mark the miracle. But if this is so, why is it not recited on Purim on which a miracle also occurred? To this, three answers are given. R. Isaac answers, "Because no *Hallel* is said for a miracle that occurred outside Eretz Israel." R. Nachman answers, "The reading of the *Megillah* is in place of *Hallel*". Raba says, "*Hallel* can only be said when one can state, 'Praise ye servants of the L-rd', but not servants of Pharaoh. But here we cannot make these statements since we are still servants of Ahasuerus."

These three answers are also brought in *Mesechta Megillah* 14a. There the Talmud prefaces its question as to why *Hallel* is not recited on Purim with a most important observation which is germane to the primary question which we are addressing, namely the reciting of *Hallel* to mark the historic events which occurred on the fifth of Iyar, 5708. The Talmud there is apparently concerned as to the reason for instituting the reading of the *Megillah* on Purim as a rabbinical injunction. "48 prophets and 7 prophetesses prophesied to Israel and they neither took away from nor added aught to what is written in the Torah save only the reading of the *Megillah*." How did they derive it? R. Hiyya said in the name of R. Joshua: "If for being delivered from slavery to freedom we chant a

hymn of praise, should we not do so all the more for being delivered from death to life?" The Gemara then asks, "If that is the reason, should we not also recite *Hallel*?" and then proceeds to give the three answers which we have already quoted from *Mesechta Arachin*.

It is important to note that the Talmud here in *Mesechta Megillah* is comparing the miracle of Purim to the miracle of the dividing of the waters of the Red Sea, even though the latter miracle is a *Nes Niglah* (a revealed miracle), whereas the former is a *Nes Nistar* (a concealed miracle). Nonetheless, we see from this text that there is no difference between a supernatural, miraculous event and one that occurs through apparent, natural means. We also know from this Gemara that were it not for the answers given, *Hallel* would have been recited to mark the deliverance from the planned destruction of the Jewish people in those kingdoms under the reign of Ahasuerus, based upon the *Kal V'Chomer* argument used by the Talmud.

Indeed it is important to determine at this time on what rationale did the Sages base the kindling of lights on Chanukah since one is not permitted to either "add or take away from what is written in the Torah?" Rashi comments that in the time of Chanukah the period of prophecy had terminated, but in the days of Mordecai there were still prophets, i.e. Haggai, Zechariah and Malachi. The Maharsha[1] explains that Rashi doesn't mean to state that the Sages had greater power and authority than the prophets to institute a new mitzvah, but that they found a Midrash upon which they based their decision to introduce the mitzvah of candles on Chanukah. The Midrash which the Maharsha is referring to is one that appears in *Parshath Behaalotcha*[2]. The Ritva,[3] however, gives a much simpler answer by telling us that the *Kal V'Chomer* argument used in Tractate *Megillah* to explain the reading of the *Megillah* as a mitzvah, can also be used to establish the obligation to kindle candles and recite *Hallel* on Chanukah. We will return to this

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1. חדושי אגדות מהרש"א, מסכת מגילה י"ד.
2. רמב"ן על המורה בתחילת פרשת בהעלותך, מדרש בשם מגילת סתרים לרבינו נסים
3. ריטב"א מגילה י"ד

reasoning of the Ritva a bit later, but at this point, it is important to establish the origin and rationale for *Hallel* in general.

Origins And Rationale For Hallels

The Talmud in *Pesachim* 117a, poses the question, "Who originally recited *Hallel*?" The Talmud gives a number of answers; however, the one which is accepted is the following: "The prophets among them ordained that Israel should recite it at every important epoch and at every misfortune — may it not come upon them — and when they are redeemed they recite it in gratitude for their redemption." Rashi gives as an example, Chanukah. From this Gemara it would seem to follow that whenever one is confronted with a situation of danger or of possible annihilation, he should recite the *Hallel* when G-d rescues him, as well as on those occasions when miracles occur which bring about his rescue. Indeed this is true not only of Jewish communities, but even of individual salvation as well. The *Magen Avraham* in *Orach Chayim* 686 rules, in the name of *Maharam Alshakar,* that any community has the right to establish its own Purim on a day on which a miracle occurred for it. It is not clear as to whether they should recite the *Hallel* on such a day or simply mark it by prayers of thanksgiving and a festive meal. However, it is obvious that this decision is based upon the Gemara in *Pesachim* which we have quoted, and, if so, one could argue that *Hallel* should be recited.

The *Chatam Sofer*[4] also discusses this question of the propriety of establishing a *Yom Tov* in our time since the Talmud tells us in *Mesechta Rosh Hashanah* 18, that the holidays enumerated in *Megillat Taanit* are no longer in effect except for Chanukah and Purim, and, therefore, "if those who came before us have nullified these special holidays, can those who come after them add on to it?" Hence, the question arises as to whether anyone has a right to establish a holiday today even if he has experienced a miracle of deliverance. This is the opinion of the *Pri Chadash*[5]. Rabbi Sofer,

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4. חתם סופר, חלק אורח חיים תשובה קצ"א "נס ראין לו שייכות כלל בבית המקדש שפיר מוסיפים".

5. או"ח תצ"ו קונטרס המנהגים ס' י"ד.

however, argues the point and claims that the nullification of *Megillat Taanit* mentioned by the Talmud refers only to those holidays which have a link to the Bet Hamikdash, but not to those that have no connection to the Bet Hamikdash. Therefore, it follows that if the Jews in a community are delivered through miraculous events, they would not only be permitted, but obligated, to establish their own Purim as it were, and sing a song of thanksgiving to the Almighty for their deliverance. This would in no way violate the prohibition of adding a holiday after the nullification of *Megillat Taanit* nor would it represent adding to the Torah — something which even the prophets did not do — since the prophets themselves told us to recite the *Hallel* on every occasion when we are confronted with imminent danger and are then saved.

There is one other Gemara that is appropriate to quote, and that is in Tractate *Shabbat* 118b. "He who reads *Hallel* every day blasphemes and reproaches the Divine Name". Rashi explains that since the early prophets told us to recite *Hallel* periodically to praise and thank G-d for certain historic events, if one were to read *Hallel* constantly, beyond these days, he would be transforming this sacred song (שיר) into a simple song which, if it became too common, would be considered blasphemy. The Maharsha amplifies that *Hallel* was instituted to mark certain miracles for which we praise G-d, who is omnipotent and all powerful and can transform what we call "nature". But if we say *Hallel* constantly, it appears as though one is scoffing, for he does not differentiate between the natural and supernatural, thereby questioning G-d's power to transform and transcend nature. This Gemara should certainly give one pause and cause one to consider most seriously the propriety of instituting the custom of saying *Hallel* on days, historic as they may be, such as *Yom Haatzmaut* and *Yom Yerushalayim*.[6]. Yet, if one appreciates the meaning of the Gemara in *Mesechta Shabbat* and studies well the interpretation of Rashi and the amplification of the Maharsha, one could argue that the reciting of *Hallel* on these two

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6. Some congregations have also adopted the custom of reading from the Torah scroll on *Yom Haatzmaut*. For a discussion of the propriety of this institution, see יחוה דעת, חלק א, ע"ט.

days in the month of Iyar is not to be confused with one who reads the *Hallel* "every day", but rather is said to celebrate events which evidence G-d's manifest intervention in the history of His people and which could be called in the felicitous term of Rabbi S. R. Hirsch, "G-d's finger in history".[7]

Among those who have addressed themselves to this question of reciting *Hallel* on *Yom Haatzmaut* and *Yom Yerushalayim* are former Chief Rabbi I.Y. Unterman, Rabbi Meshulem Roth and Rabbi Shaul Yisraeli. They all refer to the text in *Megillah* which we quoted above and each, in his own way, elaborates on that Gemara as well as some of the other Talmudic texts we have already cited. Rabbi Roth[8] also discusses the question of whether one should make the blessing of *Shehecheyanu* on *Yom Haatzmaut* as well, which is beyond the scope of this essay. He stresses the opinion of the Ritva mentioned above and feels that the basic source upon which one can establish the legitimacy of saying *Hallel* on *Yom Haatzmaut* is the *Kal V'Chomer* reasoning which the Gemara follows — if "from slavery to freedom" one recites *Hallel*, how much more so "from death to life". He also addresses himself to one of the major objections voiced by those who are opposed to the reciting of *Hallel* on *Yom Haatzmaut*, namely the prohibition of *Bal Tosif*[9] and the tradition that not even a prophet is permitted to institute a new law in our time. He refutes this objection by citing

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7. Let us mention a similar halacha regarding saying *Hallel* on ליל פסח: The ירושלמי פסחים פ"ט ה"ג makes a most interesting observation regarding the miraculous defeat of Sancherib's army at the gates of Jerusalem, which took place on the night of Pesach. It states that

"בא ליל פסח ללמד על מפלתו של סנחירב ונמצא למד ממנו, מה זה טעון הלל אף זה טעון הלל.

The קרבן עדה explains that we learn the obligation to say *Hallel* on the night of Pesach from the defeat of Sancherib. Just as that miraculous deliverance required *Hallel*, so the night of Pesach. We see from this למוד that the defeat of Israel's enemies calls for *Hallel* and is the source from whence we learn that *Hallel* should be said on Pesach night.

However, the Hida is opposed to saying *Hallel* at night. See ספר חיים שאל ס' יא.

8. שו"ת "קול מבשר" סימן כ"א. החיד"א נמצא בשו"ת "חיים שאל".

9. דברים ד:ב.

the *Minchat Chinuch* (Mitzvah 454) who states very clearly that the kindling of lights on Chanukah is not in conflict with the prohibition in the Torah of לא תוסיפו since it was instituted to commemorate a miracle, which even an individual is permitted to do, let alone an entire community.[10] The permissibility of an individual's establishing a *Yom Tov* to mark the occasion of his miraculous deliverance is valid even for future generation; this is the premise upon which the Sages instituted the mitzvah of lighting the Chanukah candles for all time.

The *Chatam Sofer* also relies on the *Kal V'Chomer* to justify the permissibility of establishing a *Yom Tov* to mark one's deliverance from danger, be it for an individual or a community.[11] Rabbi Roth relies upon the *Chatam Sofer* as an important precedent for his ruling that *Hallel* should be recited on *Yom Haatzmaut*. He also refers to three other great Jewish luminaries, applying their opinions in similar situations to buttress his decision. The *Pri Chadash*, for example, answers the question of *Bet Yosef*, who asks why we kindle eight candles on Chanukah rather than seven, since there was sufficient oil for the first day? He explains that the kindling of the Chanukah candle on the first night is meant to mark the miraculous military victory of the Jews over their enemies, and not to mark the miracle of the Menorah. From this we see that the *Kal V'Chomer* is used to justify both the lighting of the candle and the reciting of *Hallel* on the *first* day of Chanukah; one could argue that this principle can be applied as well to the military victories of the Israeli army over their enemies, with the help of the Almighty, in 5708 and 5727.

The second reference is to *Turei Even*, who questions the interpretation of Rashi in *Mesechta Megillah* on the meaning of the word *Shirah*. Rashi explains this to mean the song sung by Moshe

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10. The gist of his position as brought by Rabbi Roth is
רבנר חנוכה ליכא לא תוסיפו כיון דניתקן ע"י נס שהי' אז, וגם יחיד שנעשה לו נס יכול לקבוע יום טוב לדורות.

11. חתם סופר חלק יורה דעה תשובה רל"ג — ואפשר קריאת הלל (בחנוכה) ומגלה (בפורים) הוי ק"ו דאורייתא לומר שירה כמו שמצוה בפסח לספר יציאת מצרים בפֶה, הכי נמי ממות לחיים חייב לומר שירה בפֶה.

Rabbenu at the time of the dividing of the waters of the Red Sea, but *Turei Even* points out that this song was never established as חובה לדורות (a permanent obligation) and, secondly, this was also an event of "from death to life". Hence, this would create great problems in explaining the reasoning used by the Gemara there. Therefore, it is his opinion that the term *Shirah* here means *Hallel*, which was said on the *first day* of the exodus from Egypt, and that that song of praise was established by the prophets who were in their midst. The Gemara draws a *Kal V'Chomer* from this and subsequently asks why *Hallel* is not said on Purim as well since the source from whence we learn this law of reading the *Megillah* comes from the *Hallel* which is read on the first day of Pesach. Here again we see that the reciting of *Hallel* to mark the deliverance from "death to life" is a legitimate argument based on Torah principle. Since the three objections to reciting *Hallel* on Purim do not apply to *Yom Haatzmaut* and *Yom Yerushalayim* — for (1) these recent-day events took place in Eretz Israel, (2) we are independent from the rule of others and, (3) since we have no *Megillah* to replace *Hallel* — therefore, it is most reasonable that we recite *Hallel* itself.[12]

In conjunction with this last argument, it is appropriate to add that the *Meiri* in *Megillah* is of the opinion that if one has no *Megillah* to read on Purim, he should recite *Hallel* instead, as per the reason given by R. Nachman who says that the reading of the *Megillah* is in place of *Hallel*.[13] The *Shaarei Teshuva (Orach*

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12. However, Rabbi Ovadiah Yosef, former Sephardic Chief Rabbi of Israel, rules that *Hallel* should be recited without a *bracha*.

    Even though the establishment of a state of Israel did make possible the ingathering of many Jewish refugees, however since it also resulted in the death of many who fought for the state, our rejoicing cannot be with total joy. Furthermore, the actual day of the state's establishment was in no way a day of redemption because the war with the Arabs continued with great ferocity.

    יביע אומר חאו"ח סימן מ"א, ו':

    "מכיון שכמה אלפים מאחינו בית ישראל נהרגו במערכות ישראל ה' ינקום דמם אין לנו לקבוע אמירת הלל בברכה. ומכל שכן שהתאריך ה' אייר שהוכרז על מדינת ישראל כמדינה ריבונית ועצמאית אינו יום שנגאלו מצרתם כי הרי המלחמה נמשכה אח"כ ביתר שאת ורבים חללים הפילה... ואף שע"י הכרזת המדינה יכולנו אח"כ לקלוט עולים חדשים ולקבץ גלויותינו... מ"מ אין השמחה שלמה".

13. מאירי סוף פרק א' מסכת מגילה: "ונראה לי לטעם זה, שקריאתה זו הלולה, שאם הי' במקום שאין שם מגלה שקורא את ההלל".

Chayim 693) brings as halacha that one may recite *Hallel* on Purim, in the absence of a *Megillah*, but without a *bracha*. Rabbi Unterman quotes the *Meiri*, and indicates that for this reason the decision of the Chief Rabbinate was to recite *Hallel* on *Yom Haatzmaut*, but without a *bracha*.[14] He also quotes a Gemara in *Mesechta Berachot Daf* 14 where our Sages refer to *Hallel* as פרסומי ניסא "publicizing a miracle". Therefore, he is of the opinion that since we have no *Megillah* to read on *Yom Haatzmaut*, is is extremely important for us to publicize this great miracle through the recitation of *Hallel*.[15] Rabbi Unterman quotes from *Ma'asei Nisim* by R. Daniel Habavli, who writes,

רצון ה' יתעלה שיפרסמו הנס ויהללו שם שמים ברבים

"It is the will of the Almighty that we should publicize every miracle and praise the name of heaven in public".[16]

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14. Interestingly, the חתם סופר או"ח, קצ"ב also states that according to R. Nachman, if a miracle occurs after the destruction of the second temple outside of Eretz Israel, since we have no prophets that are competent to compose a *Megillah* to commemorate this miracle, therefore it would be proper to recite *Hallel* to mark that miracle. (Even according to Rava who says that we cannot say *Hallel* for any miracle outside of Israel, still in our particular case, since these great miracles occurred in Eretz Israel, there would apparently be no objection to reciting *Hallel*.)

    See also note 12.

15. "אור המזרח" תמוז תשכ"ח

    Rabbi Unterman, in his *Teshuva*, expresses both a caveat and a hope. It is worthwhile to quote him directly.

    "אין לנו אפשרות עתה להטיל תקנת חובה על קהילות ישראל שידקדקו לעשות כמו שהחלטנו (לומר הלל ביום ירושלים) רק בצורה של הוראה. יש לשער שיימצאו אנשים שלא יסכימו לקבל הוראתנו למעשה אבל זה אינו פוטר אותנו כלל מלהביע דעתנו כהוראה מתוך תקוה שרוב הצבור יקבל את הדבר, ובמשך הזמן ישתרש בקרב העם למסורת קבועה".

    As for the question when to recite the *Hallel*, Hida writes that when *Hallel* is recited on a day which is not one of the days included by the Sages, it should not be said after the *Amidah* but rather at the conclusion of *Tefilla*. However, Rabbi Ovadia Yosef, יביע אומר, אורח חיים, סימן, מא cites the Hida but disagrees with his ruling. Rabbi Yosef compares it to *Hallel* on *Rosh Chodesh*, which is also recited after the *Amidah*.

16. The source for the opinion of ר' דניאל הבבלי is a *Torat Kohanim* in Parshath "Emor":

    ממשמע שנאמר "ולא תחללו את שם קדשי" אני שומע שצריך לקדש השם וקידוש השם הוא שמפרסמים את הנס.

Rabbi Meshulem Roth quotes a most interesting opinion of *Hida* who discusses whether an individual who establishes a *Yom Tov* for himself to mark his deliverance is in the same category as a community when they establish theirs, insofar as reciting *Hallel*. The *Hida* points out that Rashi, in *Mesechta Pesachim* קיז where the Gemara speaks of the obligation to recite *Hallel* whenever one is delivered from danger, states כגון חנוכה, like Chanukah. This, according to him, would seem to indicate that it is only true for a *Tzibur* (group) and not an individual. Nonetheless, he feels that even an individual can recite *Hallel* without a *bracha* while the *Tzibur* can recite it *with a bracha*. To Rabbi Roth this is an extremely strong precedent for reciting *Hallel* on *Yom Haatzmaut*, even with a *bracha*, although he is reluctant to render a *psak* הלכה למעשה until such time as there will be greater acceptance of this decision on the part of others who presently have reacted in a negative fashion to the saying of *Hallel* on the fifth of Iyar.[17]

Rabbi Yisraeli, in his essay,[18] makes a most interesting differentiation between the Chanukah lights and *Hallel*. He is of the opinion that the *Kal V'Chomer* can only be used for *Hallel* on Chanukah but not for the mitzvah of Chanukah lights, which necessitates a stronger source of authority. In this manner, he explains the reason for the Maharsha's citing a midrash as a source for the mitzvah of Chanukah lights as opposed to the Ritva, who holds that the *Kal V'Chomer* is strong enough to legitimize even the kindling of lights with a *bracha* on Chanukah. He also makes another interesting observation, explaining the phraseology of the Gemara in *Megillah* 14, where the phrase ולא הותירו, "They did not add", fits the mitzvah of reading the *Megillah* but does not refer to *Hallel* since *Hallel* would not be an *addition* but rather part of the original תקנת הנביאים who taught us to say it for every disaster from which we are saved.

An additional observation can be made regarding the entire question of *Hallel* as *Shirah*. The Maharsha, in his interpretation of

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17. מ"מ למעשה לקבוע הלכה לדורות לענין **ברכת** הלל והוא דבר מחודש אחרי התקופה הארוכה של אלפיים שנות הגלות, וא"א להחליט בזה בלי הסכמת רוב גדולי הרבנים (שם).
18. ספר "ארץ חמדה" סימן ד'.

the Gemara in *Megillah Daf* 14, following the interpretation of Rashi that *Shirah* means the song sung by Moshe when they passed through the sea, explains that just as that song tells a story of the event, ,ספור הנס דקריעת ים סוף so does the *Megillah* tell the story of Israel's deliverance from the evil plot of Haman. This does however present a problem, for certainly *Hallel* does not tell a story, and yet the Gemara asks the question as to why *Hallel* is not recited on Purim as well? It would, therefore, seem that there are two categories of *Shirah*. One is a song which relates the story of G-d's intervention on behalf of the Jewish people, be it in a revealed or concealed manner, (*Niglah* or *Nistar*)[19] while the other is a song of praise to G-d which also is in the category of publicizing the miracle as we see from the text in *Berachot* cited above. This explains why the Gemara feels it would have been appropriate to do both on Purim, i.e. to read the *Megillah* as well as to recite *Hallel*. The former would tell us the miraculous story, but since G-d's name is not even mentioned in the *Megillah*, it would have been appropriate to recite the latter as well, so as to publicize the role of the Almighty in this great deliverance. Here again we can argue that on *Yom Haatzmaut* and *Yom Yerushalayim* the reciting of *Hallel* is most appropriate in order to publicize the miracle.[20]

Summary

We have attempted to demonstrate that the reciting of the *Hallel* to mark the historic events celebrated on *Yom Haatzmaut* and *Yom Yerushalayim* is based upon firm ground. From the various *Mesechtot* quoted it is apparent that *Hallel* was meant to be said whenever Jewish communities are delivered from imminent danger, especially if it is in the category of ממות לחיים "from death

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19. גם הרב ישראלי מדייק שאין הלל תלוי במדת היות הנס גלוי או נסתר דהרי ילפינן נס דפורים מנס קריעת ים סוף ובוראי נס פורים הוי נסתר ונס קי"ס נגלה אלא צריכים לומר שחובת ההודי' אינה תלוי במדת היות הנס גלוי אלא בעיקר בתוצאות הנס דכל שהוא ממות לחיים ילפינן לה מק"ו.

20. See, however, נציב, שאלתות חנוכה, גמ' ברכות יד:, who says that in the Zohar it is written that *Hallel* should not be said during *S'fira* (the period between Pesach and Shevuot).

to life". It can be argued that in 1948 and 1967 the Jewish community in Eretz Israel was in mortal danger, and her enemies proclaimed to one and all their intention to drive them into the sea, and it is proper and correct to thank Him for our salvation through the traditional medium of *Hallel*. The question of saying a *bracha* is a bit more complex and there are differences of opinion even within the Chief Rabbinate in Israel.[21]

We have also quoted from a number of latter-day authorities who have delivered their פסק הלכה based upon logical valid arguments and reasoning. This decision has been accepted over the years in many Jewish communities both in Israel and the Diaspora. Many, however, who represent the core of the Torah community, including Yeshiva and Hassidic circles, have not accepted this ruling and indeed do not mark these days at all.

It is not within the purview of this essay to present their point of view.[22] Suffice it to say that they feel very strongly that the establishment of the state of Israel and the conduct of its affairs by Jews who are far removed from Torah principles and, in many cases, antagonistic to them, does not warrant days of celebration. Indeed to some the establishment of the State is considered to be מעשה שטן while others, who do accept and recognize the State, still feel its leadership does not reflect what Torah demands from a Jewish state. Hence, since the very premise is rejected, the question of reciting *Hallel* does not even appear on the agenda. As a result, many great Torah authorities whose opinion are accepted as halacha

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21. "Since the establishment of the State of Israel in 1948, the entire *Hallel* was recited [in Israel] during the day without a ברכה. At night, only חצי הלל was said without a ברכה. Since the election of Ashkenazic Chief Rabbi Shlomo Goren in 1973, the entire *Hallel* was recited with a ברכה both day and night. Sephardic Chief Rabbi Ovadiah Yosef disagreed and insisted that the original decision of the Chief Rabbinate be continued. Concerning יום ירושלים, however, it has been the unanimous decision of the Chief Rabbinate to recite the entire Hallel by day with a ברכה."

    The *"Hallel"*: A Halakhic Inquiry, prepared by Rabbi H. Billet, Nat'l Commission on Torah Education, Stone – Saperstein Center for Jewish Education, Yeshiva University, 1967.

22. For an alternate approach to saying *Hallel* on *Yom Haatzmaut*, see the article following this one.

have not addressed themselves to this question.

This author wishes to append a comment to this controversy. Without in any way denying the flaws and shortcomings of the state of Israel in a spiritual sense, nonetheless many find in the establishment of the state and its continued viability despite numerous attempts to destroy it, an unusaul and exceptional event. As believers in G-d and in divine providence, they feel it is wrong to ignore events which are regarded by many as clear evidence of G-d's *Hashgacha.* Many Torah-committed Jews feel there is an obligation upon us to come to grips with the events of the past thirty-five years; if there are among us those who cannot participate fully in the celebrations of a secular state, it would at least be proper to find some form of recognition and thanksgiving for the wondrous events He has wrought on our behalf.

May the prayers of all Israel for a speedy and total Redemption be answered in our day.

Hallel on *Yom Haatzmaut*
The Views of Rabbi Moshe Tzvi Neriah*

Rabbi Dr. Solomon F. Rybak

Rabbi Moshe Tzvi Neriah established the Bnei Akiva network of Yeshiva high schools in Israel, affiliated with the National Religious Party. He is, in that capacity, identified with the ideology of the religious Zionist movement which considers the establishment of the State of Israel as a step in the Divine plan leading to Zion being restored. Rabbi Neriah, recognizing the historical importance and religious significance of the State of Israel, ponders the appropriateness of, firstly, reciting the *Hallel* on *Yom Haatzmaut* and, secondly, reciting a blessing over the *Hallel* in order to acknowledge the religious character of the day.

In mulling over the question in his responsum, Rabbi Neriah examines the various halachic criteria which would militate against saying the *Hallel.* Although ultimately opting not to accept these arguments, Rabbi Neriah does explain why some *poskim* consider it inappropriate to recite the *Hallel* at all. His expostion of both sides of the question is valuable in affording us a better understanding of complex issue. In conclusion, Rabbi Neriah rules that *Hallel* should be recited, albeit without a blessing, which is tantamount to

* The Hebrew text is available in הלל: עיון הלכתי במקורות חז"ל Published by The Stone-Saperstein Center for Jewish Education of Yeshiva University.

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acknowledging the argument that *Yom Haatzmaut* cannot be given the status of a holiday in the Jewish calendar. A synopsis of Rabbi Neriah's views is presented below.

In his responsum Rabbi Neriah undertakes to explore three fundamental questions in order to resolve the problem.

A. Does the act of salvation have to be accompanied by a נס נגלה "an acknowledged miracle?"

B. Does the act of salvation have to *involve* the entire nation of Israel or is it sufficent if the event only has *significance* for the entire people?

C. Should Israeli Independence Day itself be considered a day of salvation?

Does the act of salvation have to be accompanied by a נס נגלה "an acknowledged miracle?"

Rabbi Tzvi Chayes (מהר"ץ חיות) was of the opinion that *Hallel* should be recited only to commemorate a נס נגלה, based on Rashi's explanation of the Talmud's question (*Shabbat* 21a) מאי חנוכה? "what is Chanuka?" Rashi comments על איזה נס קבעוה? "Because of which miracle did they establish it?" This indicates that the circumstances of a military victory alone would prove insufficient to enable *Hallel* to be recited. A recognized miracle would have had to occur. And the Talmud, indeed, reports that it was because of the miracle of the cruse of oil that Chanukah was established with *Hallel* and thanksgiving.

Further proof that a נס נגלה is required before *Hallel* is recited can be found in the Talmud's discussion of Purim (*Megillah* 14a). *Hallel* is not recited on Purim because דאכתי עבדי אחשורש אנן "We are still the slaves of (King) Achashverosh." This statement is interpreted to mean that without a miracle evident to all (including King Achashverosh) *Hallel* is unwarranted.

Rabbi Neriah challenges the above opinion by presenting many counter proofs:

1. When the Talmud speaks of a miracle, it refers to the miracle of salvation as indicated by the passage (*Pesachim* 117a) ולכשנגאלין אומרים אותו על גאולתן "When they are redeemed, they say it (*Hallel*) for their redemption." The manner of redemption has no bearing on the requirement of saying *Hallel*. Redemption - no

matter how accomplished - results in *Hallel* being recited.

2. The texts of both *Megillat Ta'anit* (chapter 9) and the *Al Hanissim* prayer do not mention the miracle of the oil. Many rabbis even maintain that the first day of Chanukah is observed in commemoration of the miracle of salvation (*Netziv* and *Tzofnat Paneach*. Cf. *Chaye Adam*).

3. Rashi's comment על איזה נס קבעוה should not be interpreted to refer to a נס נגלה. It is obvious to anyone reading the list of dates mentioned in *Megillat Ta'anit* that the majority is unrelated to any miracle of note.

4. With regard to the statement of Ravah that *Hallel* is not recited on Purim because "we are still the servants of Achashverosh", indicating that no miracle took place, Rashi (*Megillah* 14a), following the Jerusalem Talmud (*Pesachim* 10,5), interprets it literally that the Jews were only saved from death but remained in servitude. *Hallel* is thus inappropriate. Furthermore, Rambam rules against Ravah. *Hallel* is not recited, says Rambam, because of R. Nachman's reason קריאתה זו הלילא "The reading of the *Megillah* itself is the *Hallel.*" This clearly indicates that *Hallel* is said even for a miracle not considerd to be a נס נגלה.

6. The *Shulchan Aruch (Orach Chayim 218:9)* records two views regarding the question if one should recite a blessing over a miracle which occurred in a particular place even if it was not an "obvious miracle." The same should apply to *Hallel*, in the opinion of R. Neriah.

Based on these and other reasons, R. Neriah concludes that any act of salvation involving the delivery of the children of Israel from the hands of oppressors is tantamount to נס הישועה "a miracle of salvation" and is deserving of *Hallel*. This brings us to the second consideration mentioned above.

Does the act of salvation have to involve the entire nation of Israel?

Rabbenu Tam (Cf. R. Yonah, *Berachot*, Chapter II) explains the Talmudic passage (*Pesachim* 117a) dealing with the prophets' enactment to recite *Hallel* to commemorate every act of redemption in the following way:

When all of Israel was confronted by adversity and the

> Holy One, blessed be He, performed a miracle on their behalf, they would declare a holiday and would recite *Hallel*. The (prophetic) enactment was only (to commemorate) a miracle performed for all of Israel as it is written (*Numbers* 10:9): "And when you go to war...and you shall be saved from your enemies...on the day of your gladness...you shall blow trumpets." For a miracle performed on behalf of an individual, however, they did not establish *Hallel*.

But R. Menachem Hameiri (*Pesachim*, Op. cit.) adds that "Each individual faced with an adversity and delivered from it is permitted to recite the *Hallel* on that day every year without a blessing."

In more recent times, R. Hayim Yosef David Azulai (Hida)stated (*Hayim Sha'al*, Vol. II, No. 11) that *Hallel* is recited "only when the miracle was performed for all of Israel." He deduced this from Rashi's comment (*Pesachim*, op. cit.) that the Jews recite *Hallel* for their deliverance כגון חנוכה "such as Chanukah", which, to the Hida, signifies the salvation of *all* of Israel. R. Azulai also brings support from Tosafot (*Succah* 44b) and the *SeMaG (Hilchot Chanukah)* who share this opinion. He assumes that *Rif* and Rambam also concur since they do not discuss the reading of *Hallel* in our day (the Hida assumes that since all of Israel is no longer found in one place, this law is obsolete).

R. Neriah finds fault with the above explanation. Since the Rambam discusses all the laws affecting Israel in the present and future, he should also have included the prophetic enactment of reciting *Hallel*. However, suggests, R. Neriah, the original enactment to say *Hallel* for a particular act of salvation was not obligatory but only voluntary. Rambam, thus, deletes the law from his code since it isn't obligatory. This point is an additional factor in Rabbi Neriah's conclusion that *Hallel* should not be said with a blessing on *Yom Haatzmaut*.

Two proofs to support the hypothesis that the enactment to say *Hallel* was not obligatory are presented by R. Neriah:

1. The fact that King Hezekiah did not require the reading of the *Hallel* in future generations to commemorate the downfall of

Senacharib indicates that the matter is not obligatory (Cf. *Sanhedrin* 94a).

2. The fact that later rabbis wanted to abolish the observance of Chanukah (Cf. *Rosh Hashana* 18b) indicates that there was never a *formal* obligation, for no later court can undo the enactments of a former one.

Whether the act of reciting *Hallel* on occasions marking the date of delivery from the hands of an oppressor is obligatory or only voluntary, it still remains clear that the miracle had to occur to all of Israel and not just to a segment of the people. R. Neriah, however, suggests that the act of salvation need not have involved all of Israel. The following points are presented in support of this position.

1. With regard to the above mentioned proof of the Hida brought from Rashi (*Pesachim* 117a) that Chanukah symbolized the deliverance of all Israel, one could ask whether the "miracle" of Chanukah did indeed involve all of Israel (Rabbi J.M. Mizrachi, *Pri Ha'Aretz*). R. Jonah Navon, the teacher of the Hida, suggested that since the enemy attempted to destroy the holy temple in Jerusalem, it was considered a threat to all of Israel and their deliverance is, thus, the deliverance of all Israel (*Get Mekushar*, on the *SeMaG*, p. 134b).

2. The Talmud (*Sanhedrin* 94a) berates King Hezekiah for not having established the reading of *Hallel* to honor G-d on the day marking the defeat of Senacharib. King Hezekiah ruled over Judea only after the exile of the northern ten tribes and yet the Talmud considers his failure to enact the reading of *Hallel* as a gross oversight. It is evident that the "miracle" need not have included all of Israel. However, since the enemy posed a threat to the holy temple (Cf. *Sanhedrin* 26b), its defeat is considered an act of salvation for all of Israel.

4. One need not assume that only for matters relating to the holy temple should a blessing be recited. The blessing of הטוב והמטיב was established in Yavneh in recognition of the accomplishment of having brought all of the dead of Betar to a dignified burial (*Brachot* 48b). This achievement too was viewed by the rabbis of the period to have had the national significance necessitating a special blessing.

Should Israel Independence Day itself be considered a day of salvation?

Rabbi Neriah comments that this question has relevance even according to Ravah (above) who rejected saying *Hallel* on Purim because we are still enslaved by Achashverosh. If the foreign yoke is entirely cast off, perhaps even Ravah would agree that this occasions the reading of *Hallel*. However, continues Rabbi Neriah, a material act of redemption, even political in nature, does not obligate us to express our thankfulness in a fixed way. The physical redemption must likewise foster a feeling of spiritual freedom and elevation. The matter is further explained in the Midrash (*Pesikta de Rav Kahanah, Chapter II*):

> Why do we read the *Hallel*? The Jews said in the past "We were slaves to Pharoah and now we are G-d's servants. Say praise (*Hallel*) O servants of G-d!"

The Jerusalem Talmud expands on this theme (*Pesachim* 5,5):

> As Moses was given strength in his voice so was Pharoah. Pharoah's voice carried throughout Egypt a distance of forty days. And what did it say? "Rise up and depart from among my people! In the past you were Pharoah's servants. From now on you are G-d's servants." From that moment on they sang: "Praise G-d! Say praise, O servants of G-d and not servants of Pharoah!"

Only with a rededication to the teachings of the Torah as occurred following the miracle of Chanukah and Purim can the reading of *Hallel* have any significance. *Hallel* associated with a miracle is, apparently,only for a time when all Jews have a religious awakening in appreciation of G-d's intervention.* To recite a blessing only for the miracle before a commitment to G-d is undertaken is like praising G-d for a mitzvah not yet completed. It is only in conjunction with a mass spiritual revival, following a divine act of salvation from above, that the Jew can stand in praise of his Maker.

**Editors note:* Although R. Neriah does not cite a source for his conclusion, a similar line of reasoning is followed by Rabbi Aaron Soloveitchik in *Gesher* 1969, p. 23, and the halachic basis is delineated there.

A Suggested Antenuptial Agreement: A Proposal in Wake of *Avitzur*

Rabbi J. David Bleich

During much of the medieval period European Jewish communities constituted a veritable *imperium in imperio*. Throughout this period Jews were denied many of the rights and freedoms enjoyed by citizens of their host countries. Paradoxically, it was precisely acknowledgement of their status as an alien community, a state that gave rise to so many forms of discrimination, which served as the basis for according Jews a precious privilege, viz., judicial autonomy. Jewish communities were commonly authorized to establish their own independent judicial system for the purpose of adjudicating monetary disputes which might arise among members of the Jewish community. At times jurisdiction over criminal matters was vested in these courts as well. But of greatest socio-religious significance was the virtually absolute authority with regard to matters of marriage and divorce vested in these courts. To all intents and purposes, no Jew, male or female, could contract a marriage without the acquiescence of the recognized rabbinic authorities. Hence entry into a second marriage was effectively precluded unless the first marriage was terminated by the death of a

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spouse or dissolved by execution of a valid religious divorce. The option of a civil marriage without ecclesiastic sanction was simply non-existent.

With emancipation and the conferral of the full complement of civil rights upon Jews, authority over matters of marriage and divorce was no longer permitted to remain the exclusive domain of rabbinic authorities. Thus, a marriage valid in terms of religious law might be terminated by the divorce decree of a secular court. Although of unquestionable validity for purposes of civil law, such divorce decrees are totally devoid of significance insofar as religious law is concerned.

When both marriage partners profess allegiance to Jewish law and both desire to be free to enter into a new marital relationship, the parties usually cooperate in the execution of a religious divorce, or *get*, thereby satisfying the requirements of Jewish law. A problem arises when one of the parties is unconcerned with religious proscriptions concerning remarriage without a prior *get* or when one party does not contemplate remarriage and, by reason of acrimony or malice, seeks to impede the other party from entering into a new marriage.

Such problems usually arise as a result of the refusal on the part of the husband to execute a *get*. It is indeed true that, by virtue of an edict promulgated by the 11th century authority, Rabbenu Gershom, no religious divorce may be effected without the consent of the wife and hence a wife may prevent the remarriage of her estranged husband if she refuses to accept a *get*. However, in practice, it often proves to be much easier to secure compliance of a recalcitrant wife than of a recalcitrant husband. Although all plural marriages are now banned by virtue of another edict promulgated by Rabbenu Gershom, biblical law does sanction polygamy. In certain very limited circumstances, e.g., insanity or mental incapacity of the first wife, a man may marry a second wife even subsequent to the edict of Rabbenu Gershom. Another exception to the ban against polygamous marriage is found in the situation of a husband whose wife has abandoned him but who steadfastly refuses to accept a bill of divorce. Since the disintegration of the marriage is attributable to abandonment by the wife, and since it is

she who refuses to accept a divorce, it would, in the absence of a biblical prohibition against polygamy, be inequitable to bar the husband from taking another wife by reason of rabbinic legislation. However, the edict of Rabbenu Gershom does require that a minimum of at least one hundred scholars domiciled in at least three different countries or, according to some authorities, three different jurisdictions, certify that dispensation for a second marriage is factually justified. The rationale underlying this exception to the ban against plural marriage is particularly cogent if the edict against plural marriage is construed as having been designed to safeguard the welfare and status of the wife. A woman who has abandoned her husband and home without leave of a *Bet Din* is not entitled to, and presumably does not need, such protection. This resembles the legal principle that equitable relief and protection is accorded only to those who appear before the court with "clean hands." Hence, unless the wife has contested the civil divorce or otherwise professes a desire for restoration of domestic harmony, the wife's refusal to accept a *get* subsequent to the civil decree may, in fact, entitle the husband to a dispensation to remarry, known as a *heter me'ah rabbanim*. Often the realization that, in the light of her own intransigence, the husband's petition for a *heter me'ah rabbanim* is likely to be granted is sufficient to engender a willingness on the part of the wife to enter into negotiations for the execution of a religious divorce.

Since polyandry is forbidden by biblical law, no provision similar in effect to that of the *heter me'ah rabbanim* could possibly be instituted on behalf of the wife. In the absence of a valid *get* any subsequent marriage which may be contracted by the wife is nothing other than an adulterous liaison and any issue of such an adulterous union will unavoidably suffer the stigma of bastardy. Since no device similar in nature to the *heter me'ah rabbanim* could be devised in order to enable the wife to remarry, it is not surprising that the number of women prevented from remarrying by reasons of religious scruples far exceeds the number of men finding themselves in the same quandary.

Post-emancipation Jewry is increasingly confronted by the problem of the modern-day *agunah*, a "chained" woman denied

consortium and other marital prerogatives but unable to enter into a new marital relationship because of the husband's refusal to execute a religious bill of divorce. In an age of an ever increasing rate of divorce what was once the tragic plight of the few has become a societal problem of statistically significant dimension. In times gone by, the husband's own desire to be free to enter into a second marriage usually constituted a measure of self-interest sufficiently strong to guarantee cooperation. Moreover, an autonomous judiciary had available to itself other coercive measures which it might employ at its discretion. With the loss of formal judicial authority there remained only the power of moral persuasion; with the erosion of moral authority such already weakened power may, at times, degenerate into total impotence. As a result there has arisen a pressing need for finding ways and means of assuring that a Jewish husband will not avail himself of civil remedies for relief of his own marital obligations and constraints while refusing to make it possible for his estranged wife to remarry with ecclesiastic blessing.

Some thirty years ago, the Conservative movement, through its Rabbinical Assembly of America, sought to resolve this modern-day *agunah* problem by incorporating into the *ketubah* executed in conjunction with the marriage ceremony a clause which would have the effect of compelling the parties to seek a *get* upon the breakdown of their marriage. The following is the English-language text of the Conservative amendment to the *ketubah:*

> And in solemn assent to their mutual responsibilities and love, the bridegroom and bride have declared: as evidence of our desire to enable each other to live in accordance with the Jewish law of marriage, throughout our lifetime, we, the bride and bridegroom, attach our signatures to this Ketubah, and hereby agree to recognize the Beth Din of the Rabbinical Assembly and the Jewish Theological Seminary of America, or its duly appointed representatives, as having authority to counsel us in the light of Jewish tradition which requires husband and wife to give each other complete love and devotion, and to summon either party at the request of the other, in order to enable the party so

> requesting to live in accordance with the standards of the Jewish law of marriage throughout his or her lifetime. We authorize the Beth Din to impose such terms of compensations as it may see fit for failure to respond to its summons or to carry out its decision.[1]

The desired effect of this amendment is to obligate both husband and wife to submit to the authority of the Beth Din of the Rabbinical Assembly and the Jewish Theological Seminary of America. Authorization of the Beth Din to impose a financial penalty upon the recalcitrant party which, it was presumed, would be enforceable through the civil courts, was designed to assure compliance with a directive requiring cooperation in the execution of a *get*.

Halachic authorities vigorously opposed this innovation on a number of grounds:

1. The Beth Din established by the Rabbinical Assembly and the Jewish Theological Seminary is composed of Conservative clergymen who are disqualified from serving as judges on rabbinic courts. The doctrinal beliefs expressly or tacitly accepted by the Conservative movement constitute a departure from the teachings of traditional Judaism of a magnitude such as to disqualify its adherents from serving as judges sitting on a Beth Din.[2]

2. The proposed penalty constitutes an *asmachta* which is not enforceable in Jewish law,[3] just as penalty clauses are ordinarily not enforceable in civil law, albeit for different reasons.[4] Hence, from the vantage point of Jewish law, any attempt to exact a monetary penalty would constitute illicit extortion. Moreover, a *get* executed in fear that such a penalty would actually be assessed were

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1. *Proceedings of the Rabbinical Assembly of America*, XVIII (1954), 67.
2. See this writer's "Parameters and Limits of Communal Unity from the Perspective of Jewish Law," *Journal of Halacha and Contemporary Society*, no. 6 (Fall, 1983), p. 14; R. Norman Lamm," Recent Additions to the Ketubah," *Tradition*, vol. II, no. 1 (Fall, 1959), p. 94; and R. Eliezer Waldenberg, *Tzitz Eli'ezer*, V (Jerusalem, 5717), introduction, chap. 7.
3. For a discussion of the nature of *asmachta* see *Encyclopedia Talmudit*, II, 108-115. (Eng. ed., 522-538).
4. See Uniform Commercial Code § 2-718.

cooperation not forthcoming would, according to many authorities, constitute a *get me'useh* i.e., a divorce executed under duress. Such a *get* would be invalid.[5]

3. Even assuming that the *asmachta* problem may be overcome in some manner and the monetary penalty rendered actionable in Jewish law, there exists grave question with regard to the validity of a *get* executed in circumstances in which the *get* is granted by a husband in order to free himself from the burden of such penalty.[6]

There were—and indeed still are—many serious question regarding the enforceability of this agreement in civil courts. Nevertheless, a recent decision of the New York Court of Appeals in *Avitzur v. Avitzur*[7] serves to endow this document with some legal authority. Despite the halakhic and legal questions which remain, the *Avitzur* decision points the way to the crafting of an agreement which poses no halakhic difficulty and which is enforceable in civil courts.

Avitzur represents the first occasion on which the highest court of any state has acted on a matter pertaining to the execution of a *get*. If proper procedures are implemented, this decision will make it easier to force a recalcitrant husband to grant a religious divorce in accordance with Jewish law. In order to assess the implications of this recent decision of the New York Court of Appeals, it is necessary to bear in mind the facts of the case.

Susan and Boaz Avitzur were married in May 1966. The ceremony was performed by a Conservative clergyman who used a *ketubah* in which the earlier-cited clause was incorporated. The Avitzurs obtained a civil divorce in 1978. Susan Avitzur then summoned Boaz to appear before the Beth Din named in their

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5. See *Piskei Din Shel Batei ha-Din ha-Rabbaniyim*, II, 9-13; R. Isaac ha-Levi Herzog, *Ha-Darom*, no. 1 (Shevat 5717), pp. 3-28 [reprinted in *Osef Ma'amarim* ed. R. Charles B. Chavel and R. Nachum Rabinovitch (New York, 5726) pp. 42-67]; R. Eli'ezer Rabinowitz-Teumim, *No'am*, I (5718), 287-312; R. Yitzchak Glicksman, *No'am*, III (5720), 167-194; and R. Elyakim Ellinson, *Sinai*, XXIX (Tammuz-Sivan 5731), 141-150.
6. See conflicting authorities cited by Ramo, *Shulchan Aruch, Even Ha-Ezer* 154:5 and accompanying commentaries.
7. *N.Y.L.J.*, Feb. 17, 1983, p. 4, col. 1.

ketubah pursuant to the provisions of their agreement recognizing that body as having authority to counsel the couple in matters pertaining to their marriage. Boaz Avitzur refused to comply. Thereupon Susan instituted legal proceedings designed to compel Boaz to appear before the Beth Din. Boaz requested the court to dismiss the complaint, arguing that for the court to order him to appear before the Beth Din would involve the civil court in an impermissible consideration of a purely religious matter.

The Supreme Court, which in New York is a court of original jurisdiction, ruled in favor of Susan.[8] It stated that ordering Boaz to appear before a Beth Din on the basis of his own contractual agreement involves no judicial entanglement in any doctrinal issue. Boaz, however, argued that, for various reasons, even on the basis of the terms of the *ketubah* as applied to his particular situation, he was not obligated to appear before the Beth Din. The Supreme Court accepted Boaz' contention that his obligations under the *ketubah* were not unequivocal and therefore ordered a plenary trial in order to resolve those questions. (Boaz argued that the agreement which he signed obliged him to appear when summoned by the Beth Din itself, but not when such a demand was made only by his wife. Moreover, he contended that since his wife did not heed an earlier demand on his part to appear before the Beth Din, he was relieved of any further obligation.)

The trial never took place. Boaz appealed the decision of the Supreme Court and the Appellate Division overruled the lower court's ruling, declaring that the *ketubah* is a "liturgical agreement" which has no standing in civil law.[9] That finding has now been reversed by the Court of Appeals in a four to three decision. The legal effect of such reversal is that the original order of the Supreme Court requiring a plenary trial remains in effect. In its original ruling the Supreme Court declared that Boaz was entitled to a trial in order to determine upon the facts of that particular case whether he is indeed obligated to appear before the Beth Din.

Although the order of the Supreme Court required the parties

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8. Avitzur v. Avitzur, No. 211-81 (Albany Co., Dec. 19, 1980).
9. Avitzur v. Avitzur, No. 41550 (3d Dep't April 8, 1982).

to appear before the Conservative Beth Din, virtually all Orthodox rabbinic and communal organizations joined in a brief as "friends of the court" urging that, as a matter of law, the order be upheld. They did so because the principles of law involved are of concern to the entire Jewish community.

The only issue before the Court of Appeals was whether a person might be compelled to appear before a Beth Din on the basis of an undertaking executed as part of a *ketubah*. To this question the highest court of the State of New York answered with an emphatic "Yes!" The question of enforcing an order of the Beth Din directing the husband to execute a *get* was not before the court. However, although the matter is not entirely resolved, on the basis of the language of the *Avitzur* decision there is reason to assume that a decision of the Beth Din ordering the husband to execute a *get* would also be enforceable in civil courts.

In issuing this decision the Court of Appeals clearly recognized that the matter before the Court was not an order to execute a *get* but an action to enforce an undertaking to submit the matter to arbitration. Thus the court declared that:

> Viewed in this manner, the provisions of the ketubah relied upon by plaintiff constitute nothing more than an agreement to refer the matter of a religious divorce to a nonjudicial forum. Thus, the contractual obligation plaintiff seeks to enforce is closely analogous to an antenuptial agreement to arbitrate a dispute in accordance with the law and tradition chosen by the parties. There can be little doubt that a duly executed antenuptial agreement, by which the parties agreed in advance of the marriage to the resolution of disputes that may arise after its termination, is valid and enforceable (e.g., *Matter of Sunshine*, 40 N.Y.2d 875, aff'g 51 A.D.2d 326; *Matter of Davis*, 20 N.Y.2d 70). Similarly an agreement to refer a matter concerning marriage to arbitration suffers no inherent invalidity (*Hirsch v. Hirsch*, 27 N.Y.2d 312; see *Bowmer v. Bowmer*, 50 N.Y.2d 288, 193). This agreement — the ketubah — should ordinarily be entitled to no less dignity than any other civil contract to submit a dispute to a non-judicial

> forum, so long as its enforcement violates neither the law nor the public policy of this State (*Hirsch v. Hirsch*, supra, at p. 315).[10]

In this decision the Court of Appeals ruled that an agreement to arbitrate the issue of religious divorce could be enforced "upon application of neutral principles of contract law, with no reference to any religious principle"[11] and hence that enforcement of such an agreement involves no judicial entanglement in matters of religion. The question of whether application of a neutral principles doctrine would similarly render an agreement to execute a *get* enforceable in a civil court was not decided since that issue was not before the court.

The Court of Appeals recognized that a *ketubah* is indeed a contract between the bride and the groom entitled to the same dignity and standing as any other civil contract. Antenuptial agreements to refer disputes associated with the marital relationship to arbitration are routinely upheld by the courts. The agreement to appear before a Beth Din was recognized by the court as an agreement to arbitrate disputes before a specific body. The court also acknowledged that in agreeing to submit their disputes to a Beth Din the parties recognized that the Beth Din would apply provisions of Jewish law in rendering a decision. The Court of Appeals found this to be entirely acceptable and upheld the right "to arbitrate a dispute in accordance with the law and tradition chosen by the parties."

It must be emphasized that the Court of Appeals was not asked to rule that in signing a *ketubah* the husband obligates himself to execute a *get* whenever an irreparable breakdown of a marriage occurs (as did a Canadian court in *Morris vs. Morris*)[12] or even when required by Jewish law (e.g., in cases of adultery, as did a New York court in *Stern vs. Stern*[13] and a New Jersey court in

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10. *N.Y.L.J.*, Feb. 17, 1983, p. 4, col. 2.
11. *Loc. cit.*
12. 36 D.L.R.3d 447, 3 W.W.R. 526, 10 R.F.L. 118 (Manitoba Q.B. 1973), *rev'd* 42 D.L.R. 3d 550, 558 (Man. Ct. App. 1973) (Friedman, C.J., dissenting).
13. *N.Y.L.J.*, August 8, 1979, at p. 13, col. 5, F.L.R. 2810.

Minkin vs. Minkin).[14] In light of the narrow majority in *Avitzur* it is unlikely—but not impossible—that the same court would construe the traditional *ketubah* used by Orthodox Jews, which does not contain an explicit arbitration clause, as requiring the parties to submit to the jurisdiction of a Beth Din for the purpose of adjudicating a claim for the execution of a *get*. But the *Avitzur* decision does mean that when a separate document is executed at the time of a wedding explicitly binding the parties to appear before a particular Beth Din upon dissolution of the marriage by civil divorce, such an agreement would be enforced by the courts and appearance before the Beth Din could be compelled.

As noted earlier, Orthodox objections to use of the Conservative *ketubah* center upon the qualifications of the members of the particular Beth Din designated in that document and upon the monetary penalties provided for failure to abide by the decree of the Beth Din. It is readily apparent that an agreement which is not flawed in these respects is not halakhically objectionable.[15] Elimination of those aspects of the agreement would present no barrier to civil enforcement. Certainly, a stipulation to appear before a specific Orthodox Beth Din would be no less enforceable than an agreement to appear before a Conservative Beth Din. Moreover, subsequent to *Avitzur* there is no need to stipulate a penalty for non-appearance before the Beth Din or for failure to abide by its decision since the court is prepared to command specific performance upon pain of contempt proceedings. Since appearance before a Beth Din is a basic requirement of Jewish law there is no question that the threat of criminal contempt may be used to enforce the appearance of the parties.

A word of caution is in order. Execution of an agreement similar in nature to that upheld by the Court of Appeals in *Avitzur* would do much to ameliorate the plight of the *agunah* but would by

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14. 880 N.J. Super. 260, 434 A.2d 665 (1981).

15. Various other proposals for antenuptial agreements emanating from Orthodox sources have been circulated in recent months. Proposals incorporating a simple penalty clause are substantially no different from the provision of the Conservative *ketubah* insofar as the defects of *asmachta* and *get me'useh* are concerned. Those proposals will be examined in detail in a forthcoming study.

no means serve as a panacea. The first problem which must be recognized is a legal one centering upon the import of the decision itself.

As noted earlier, it might be assumed that an order of the Beth Din to execute a *get* pursuant to the judicially mandated appearance before that tribunal would also be enforced by the *Avitzur* court. Indeed, the minority dissented in part because it viewed such an order as unenforceable and declared, "[T]he evident objective of the present action ... is to obtain a religious divorce, a matter well beyond the authority of any civil court."[16] The majority, it might be presumed, fully recognized that arbitration is pointless unless the decision of the arbitrators is enforceable in a court of competent jurisdiction. Hence, it might be surmised that the majority would have been willing to enforce a decision of the arbitrators for specific performance even though it might regard such a remedy to be unattainable in a judicial forum. However, it should be noted that in *Board of Education v. Carcovia*[17] an arbitration agreement to seek an advisory opinion was held to be enforceable. Hence, it is possible, although unlikely, that a future court might find confirmation of an arbitration decision commanding the husband to grant a *get* to be unenforceable and to construe *Avitzur* as mandating only that the parties seek the advice of the Beth Din.

More significantly, utilization of the judicial process as a means of compelling a husband to execute a *get* may in many cases invalidate the *get*. Utilization of the police power of the secular state in compelling the husband to cooperate in the execution of a *get* is appropriate only if: (1) The Court does not directly order the execution of the *get* but simply confirms the order of a competent and qualified Beth Din by means of a directive in the form of "*Aseh mah she-Yisra'el omrin lecha* — Do that which the Jewish court orders you to do;[18] and (2) there exist grounds in Jewish law which warrant a direct ordef by the Beth Din compelling the husband to grant a *get*.[19]

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16. *N.Y.L.J.*, Feb. 17, 1983, p. 5, col. 1.
17. 36 A.D.2d 851 (2d Dept 1971).
18. See *Shulchan Aruch, Even ha-Ezer* 134:9.
19. For a discussion of such grounds see *Shulchan Aruch, Even ha-Ezer* 154.

These problems notwithstanding, the *Avitzur* decision is of great significance in ameliorating the plight of the *agunah*. Its significance lies in the fact that it points to a method by means of which the parties may be compelled to appear before a Beth Din. It is to be anticipated that when the parties appear before the Beth Din, the Beth Din will be able to use its ample powers of moral persuasion in order to effect the desired result.[20] Experience teaches that the primary problem is securing an appearance by the husband before the Beth Din. Upon appearance, the necessary agreement to the granting of a *get* can often be obtained. Furthermore, as discussed earlier, in those cases in which the Beth Din finds grounds in Jewish law for compelling the husband to execute a *get* there is reason to anticipate that such a decision would also be enforced by the courts.

The Court of Appeals has ruled that an agreement to arbitrate a marital dispute before a Beth Din constitutes a valid contract on the grounds that directing the parties to appear before an arbitration panel which is then free to reach any decision it finds to be just and equitable involves no judicial entanglement in religious matters. But is an explicit undertaking to execute a *get* or an undertaking to appear before a Beth Din for the specific purpose of executing a *get*, similarly enforceable?[21] The opinion of the court in

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20. A more radical proposal for an agreement which would serve as the basis for actual enforcement rather than for mere moral persuasion has been advanced by this writer in "Modern-Day *Agunot*: A Proposed Remedy," *The Jewish Law Annual*, IV (1981), 167-187.

21. The question of enforceability in a civil court is germane only in situations in which there exist grounds in Jewish law for compelling the husband to grant a *get*. According to the vast majority of rabbinic authorities, such an agreement constitutes a *kinyan devarim* and is not binding as a voluntary undertaking. See *Teshuvot Kol Aryeh, Even ha-Ezer*, no. 85 and *Teshuvot Imrei Yosher*, I, no. 6; cf., *Bet Shmu'el, Even ha-Ezer* 134:7. In two reported cases rabbinical courts in Israel have ruled that such an agreement on the part of the husband cannot be enforced. See *Piskei Din shel Batei Ha-Din ha-Rabbaniyim*, VIII, 358-361 (Rabbinical District Court of Tel Aviv-Jaffa 1969; and *Piskei Din shel Batei Ha-Din ha-Rabbaniyim*, VIII, 179 (Rabbinical District Court of Tel Aviv-Jaffa 1980). Regarding enforceability of such an undertaking on the part of the wife see *Piskei Din shel Batei ha-Din ha-Rabbaniyim*, IV, 354 (Supreme Rabbinical Court of Appeals, 1956).

Avitzur does not provide a direct answer to that question. Such agreements have been enforced by lower courts in New York.[22] Indeed, the Appellate Division pointedly stated that such agreements are enforceable, but only when made in a nonliturgical context. The Appellate Division declined to enforce a stipulation incorporated in the *ketubah* only because it was an integral part of a religious covenant.[23]

Nevertheless, a future court might examine the *Avitzur* decision, and conclude that the Court of Appeals was willing to recognize only that agreements to arbitrate involve no judicial entanglement in matters of religion but that the court would concede the cogency of the dissenting view as applied to an explicit agreement to execute a *get*. Such a view would even be consistent with enforcement of an order of the Beth Din to execute a *get* pursuant to proceedings undertaking on the basis of an arbitration agreement, confirmation of an order of arbitrators to perform a religious act might well be regarded as removed from adjudication

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22. Waxstein v. Waxstein, 90 Misc. 2d 784, 395 N.Y.S.2d 877 (Sup. Ct. 1976), *aff'd*, 57 A.D.2d 863, 394 N.Y.S.2d 253 (2d Dep't 1977). See also Koeppel v. Koeppel, 138 N.Y.S.2d 366 (Supp. Ct. Queens Cty. 1954), *aff'd*, A.D.2d 853, 161 N.Y.S.2d 694 (2d Dep't 1951) and Margulies v. Margulies 42 A.D.2d 517, 344 N.Y.S.2d 482 (1st Dep't 1973).

23. It should further be noted that Jewish divorce is in no way a matter of religion in the sense that that concept is understood in constitutional law. The procedure involves no profession of faith, requires no act of worship and does not invoke the Deity. It may be performed even by an atheist. Divorce in Jewish law is simply a formal mode of cancelling an obligation incumbent upon the parties by virtue of their marriage. Thus the Talmud, *Kiddushin* 41b, describes the *get* as "secular" (*chol*) in nature. The non-religious nature of Jewish divorce has been explicitly recognized in a number of lower court decisions. For a fuller discussion of this question and its implications see this writer's, "Jewish Divorce: Judicial Misconceptions and Possible Means of Civil Enforcement," *Connecticut Law Review* vol. XVI, no. 2 (March, 1984).

    Similarly, the marriage contract itself is in no way a religious document. It merely recites the obligations assumed by the groom for the support and maintenance of the bride and the financial provisions made for the wife upon dissolution of the marriage by death or divorce. Jewish law requires the document both for the protection of the bride and as a means of preventing precipitous divorce. The instrument itself is no more religious in content—or romantic in tone—than an insurance policy.

of matter to a degree sufficient to prevent infringement upon the Establishment Clause of the First Amendment, but direct involvement by the court in substantive matters pertaining to the *get* might well be construed as forbidden "entanglement" in a matter of religious practice. Therefore, prudence would dictate that any agreement drafted for use in the future omit reference to the *get* itself but provide simply that, upon dissolution of the marriage by a civil court, the parties bind themselves to the jurisdiction of a Beth Din for adjudication of any remaining disputes with regard to execution of a *get*. The agreement should name a specific Beth Din or, at the minimum, establish a mechanisim for convening a Beth Din since a New York court has previously held that the courts may not convene a Beth Din on behalf of the parties.[24] The drafting of such an agreement as a separate instrument, independent of the *ketubah*, would also obviate the objection expressed in the dissenting opinion in *Avitzur* to the effect that the *ketubah* is a religious document, not a civil contract.

An agreement designed to achieve these objectives might read as follows:

MEMORANDUM OF AGREEMENT made this _____ day of _____ 57____, corresponding to the _____ day of _____ 19 ____, in the City of _____ State of _____ between _____, who resides at _____, City of _____ State of _____ _____, and _____, who resides at _____, City of State of _____.

WHEREAS the aforementioned parties are presently to be united in matrimony as husband and wife; and

WHEREAS the parties desire that, should their marriage be dissolved by a civil court, there be no unjustified impediment to remarriage due to considerations of Jewish law:

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24. See Pal v. Pal, 45 A.D.2d at 739, 356 N.Y.S.2d at 673 and Waxstein v. Waxstein, *supra*, note 20.

THEREFORE, IT IS HEREBY AGREED by and between them that, should their marriage be annulled or dissolved by a civil court by means of an annulment or by means of a decree of divorce and should there arise a dispute of difference between the parties with regard to execution of a Jewish divorce known as a *get*, they will submit such dispute to a Beth Din for a binding decision in accordance with Jewish law. The parties hereby agree to refer all disputes and differences with regard to a *get* to award, order and final binding determination (of the Beth Din of the Central Congress of Orthodox Rabbis) (or: of the Beth Din of the Rabbinical Alliance of America) (or: of the Beth Din of the Rabbinical Council of America) (or: of the Beth Din of the Union of Orthodox Rabbis of the United States and Canada) (or: of a Beth Din composed of three qualified Rabbis, one Rabbi to be chosen by each of the parties and the third Rabbi to be chosen jointly by the two Rabbis named by the parties). Each of the parties agrees to appear in person before the Beth Din upon the request of the other party. The award or decision of the Rabbis or a majority of them shall be enforceable in any court of competent jurisdiction pursuant to the New York Law of Arbitration – CPLR ARTICLE 75.

The members of the Beth Din shall not be required to take an oath, nor to administer an oath to any witnesses at the hearing, nor to follow any particular rules or procedures except those generally followed at appearances before a Beth Din. The decision shall be rendered at the conclusion of the hearings or within thirty (30) days thereafter and a copy of the decision shall be delivered or mailed to each party. The decision shall be signed by the members of the Beth Din and, upon request of the prevailing party, they shall acknowledge their signature before a notary public so that it may be enforced in a court of competent jurisdiction.

IN WITNESS WHEREOF, Bride and Bridegroom have entered into this Agreement in the City of _____, State of _____, U.S.A.

Witness:

Name: _____ Bride: _____

Address: _____

Signature: _____

Witness:

Name: _____ Groom: _____

Address: _____

Signature: _____

ACKNOWLEDGEMENT[25]

STATE OF _____ COUNTY OF _____

On the day of _____ 19____ before me personally came _____

who resides at _____

to me known to be the individual described in and who executed the foregoing instrument, and acknowledged that he executed the same.

_____

NOTARY PUBLIC

25. Acknowledgement before a notary public is necessary only when required by statute. An antenuptual agreement of this nature is not among the instruments requiring acknowledgement under New York statutes. See 1 N.Y. Jur.2d 202-204. However, in light of a 1980 amendment of the New York Domestic Relations Law requiring acknowledging of certain other antinuptial agreements it would be purdent to notarize an agreement of this nature as well. See New York Domestic Relations Law § 2,3,6, part B (3) (Consol.) In jurisdictions in which acknowledgement is required by statute, there is disagreement among the courts as to the effect, on its validity or enforceability, of noncompliance with these requirements. See 16 A.L.R.3d 372-378.

STATE OF _____ COUNTY OF _____
On the day of _____ 19____ before me personally came _____
who resides at _____
to me known to be the individual described in and who executed the foregoing instrument, and acknowledged that she executed the same.

_____
NOTARY PUBLIC

Tubal Ligation and Jewish Law: An Overview

Rabbi Joseph S. Ozarowski

Medical science has in recent years made available many procedures designed to cure illness and enhance life. However, these often include areas with distinct halachic ramifications. One of the increasingly popular operations is tubal ligation, or as it is often known, "tying the tubes". This particular procedure involves cauterizing, severing, tying, or other manipulation of the woman's fallopian tubes in order to prevent pregnancy. Tubal ligation is becoming a frequent means of birth control. Aside from general questions regarding the permissibility of birth control in Jewish law, which topic we are not discussing here, tubal ligation raises its own major question — the permissibility of castration - sterilization for women. The Hebrew term for this is סירוס-*Sirus,* and will be used throughout this paper. Our study is not meant to offer *Piskei Halacha,* which should when necessary be sought from a *Rav.* Rather, it will offer some guidance in exploring the general subject area.

The primary source for the ban on castration or sterilization in males is biblical:

> That which has its stones bruised, crushed, torn or cut you shall not offer unto the Lord, nor shall you do thusly in your land... because their corruption is in them, there is blemish in them.[1]

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1. ויקרא כ״ב: כ״ד-כ״ה

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Although the specific scriptural reference is to sacrificial animals, the Oral Law understands this verse as referring to an expanded ban on castration for all animals[2](not merely sacrificial ones), even outside "the land" *(Eretz Yisrael)*,[3] and for humans as well (as we will shortly see).[4]

The *Sefer HaChinuch* explains the reasoning behind this commandment.

> The Al-mighty created a complete world. . . and He blessed all life to "be fruitful and multiply". Also He commanded human males to do this in order to perpetuate the species. Therefore, one who destroys the reproductive organs shows that he wishes to end the work of the Creator and destroy His good world.[5]

The primary Talmudic source for the *issur sirus* on humans is from *Shabbat* 110b. The section deals with the permissibility of using a drug on Shabbat which renders a man impotent (כוס של עיקרין), an early male oral contraceptive.[6] The Gemara continues:

> But is this permitted? Has it not been taught, How do we know *sirus* in a male is forbidden? From the verse 'Nor shall you do thusly in your land'—the words of R.Hanina... This is only if (castration) is intended; but here it happens by itself (and should be permitted on Shabbat)...

The discussion continues until it concludes with the assumption that the earlier reference is to a woman, who is not obliged to "be fruitful and multiply" (פרו ורבו).[7] According, however, to R. Yohanan Ben Beroka, who holds that women are

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2. תו"כ על הסמך ובארצכם לא תעשו. Since it is a common practice to spay animals, which is forbidden, this poses a problem for a Jewish veterinarian. See פתחי תשובה אות י. It is even *assur* for a Jew to have his animal sterilized by a non-Jew. אבן העזר יב.
3. שם "לא תעשו"
4. קדושין כ"ה: בכורות ל"ט: ותוספתא יבמות י: ד'
5. ספר החינוך רצ"א:א'
6. רש"י בגמ'
7. בראשית א:כ"ח, ט:א'

indeed included in the obligation to "be fruitful and multiply," the reference would be to a barren or older woman who could not conceive. Within this context, it should be pointed out that the dispute over whether women are commanded *pru u'rvu* is found elsewhere in the Talmud[8] and the issue plays a part in the subsequent halachic discussion.

The Talmud, thus, clearly states that *sirus* of a male is absolutely forbidden by the Torah. It is, however, inconclusive as to whether this applies to a female as well.

The second rabbinic source is recorded in *Torat Kohanim*, the halachic Midrash on Leviticus.

> How do we know that *sirus* applies to women? From the verse "Because their corruption is in them, there is blemish in them". R. Yehuda says, "In them" — that women are not included in *sirus*.[9]

We see, then, from this selection that the *Tannaim* dispute over the ban on *sirus* being applicable to females.

The Malbim on our verse in Leviticus[10] attempts to resolve these two sources by aligning them: The *Tanna Kamma* holds as does R. Yohanan Ben Beroka that women are commanded *pru u'rvu* and therefore are included in the ban on *sirus*. R. Yehuda holds that women are not commanded *pru u'rvu* and thus are not included in the ban on *sirus*. This approach finds its way into later halachic literature.[11]

A third rabbinic source is found in the *Tosefta*. It mentions the above dispute with a small but important difference in terminology.

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8. יבמות ס״ה:, גיטין מ״ג. קדושין ל״ב.
9. תו״כ על ויקרא כ״ב:כ״ד־כ״ה. The *Tanna Kamma's* understanding of the verse is, of course, an inclusive one. According to R. Yehuda, the terminology is in the masculine gender and therefore, the verse can only apply to males. See פ׳ רבנו ס׳ זית רענן על ילקוט שמעוני - אמור ר״ב ס״ק ל״ב בסוף and also הלל על תו״כ נ״א.
10. מלבי״ם שם קכ״ג
11. The Malbim also gives another interpretation that the dispute in *Torat Kohanim* is not over human *sirus* but over whether *sirus* would invalidate female animals for sacrifice. According to the *Tanna Kamma* it would, while according to R. Yehuda, it would not.

> One who castrates a human or animal... adults or minors, male or female is *chayav* (liable). R. Yehuda says that one who castrates males is *chayav* but one who castrates females is *patur* (not liable).[12]

The *Tanna Kamma* in *Torat Kohanim* merely mentions sterilization as forbidden for women while here he indicates the possibility of a penalty. R. Yehuda in *Torat Kohanim* simply excludes females from the ban on *sirus*. Here, he holds that females may not be penalized but he does not explicitly say they are excluded from the ban.

This dispute, its interpretations, the attempts to reconcile it with the above-mentioned Talmudic passage and the attempts to define *patur* form the core material on the subject.

There are two relevant Tosafot texts on the matter.[13] Both seem to follow R. Yehuda's opinion as expressed in the *Torat Kohanim*, though it is not cited as such. Both texts contain the words "*Sirus* does not apply to women". The first mentions the opinion in the Gemara that women are not mandated to "be fruitful and multiply", and therefore, uprooting the procreative function in women would be permitted. The second uses identical reasoning in permitting tampering with procreative organs after *sirus* since *sirus* itself is not forbidden to women. Many *Rishonim* in their comments to the Gemara follow this thinking and concur that the ban on *sirus* simply does not apply to women. These include Ramban[14] and Rashba.[15]

The codes, however, still reflect uncertainty. Rambam writes:

> It is forbidden to destroy male reproductive organs. . . whether human or animal. . . . and those who do are biblically liable to flogging (*malkot*). . . . and one who

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12. תוספתא מכות ד׳
13. שבת ק״י: תוס׳ ד״ה והתניא. שם ק״א. תוס׳ ד״ה בזקנה
14. רמב״ן שם ד״ה הא דאמרינן. אפ״ה באשה שרי שאין בה דין סירוס
15. רשב״א שם ד״ה בזקנה ״ומשום סירוס נמי ליכא דבאשה ליכא משום סירוס דאדם הוא אסר רחמנא

castrates human or animal females is *patur*.[16]

What does the term *patur* mean here? Is female *sirus* according to Rambam forbidden or allowed? The *Magid Mishneh*[17] attempts to answer this:

> In *Torat Kohanim*, R. Yehuda holds that *sirus* does not apply to females, and thus it is brought in the Talmud (our selection from *Shabbat* 110-b); and *Rabenu* (Rambam) explains this to mean that there is no penalty for female *sirus* but there is an *issur* since he did not write that it is permitted (*mutar*) to castrate females... thus *Rabenu* wrote *patur*.

Actually, Rambam's terminology seems to reflect R. Yehuda in the *Tosefta* rather than R. Yehuda in the *Torat Kohanim*, since the term *patur* had its origin there. In *Torat Kohanim* R. Yehuda more explicitly excludes females from the ban on *sirus*.

In any case the *Magid Mishneh* understands Rambam to say that *sirus* is forbidden to females but there is no penalty of *malkot*. This is inferred from Rambam's earlier comment spelling out *malkot* for castration of males. The *Magid Mishneh* uses this as the way of reconciling the Gemara in *Shabbat* (which is vague) with R. Yehuda's opinion. The linguistic proof offered is that the word *mutar* - explicitly permitted - is not used. Therefore, it must be forbidden. Neither Rambam nor his commentaries[18] note whether the nature of the prohibition is biblical or rabbinic.

The *Bet Yosef*[19] and *Shulchan Aruch*[20] follow the approach of the *Magid Mishneh* stating that *sirus* is not allowed but also not punishable.[21] This approach posits a more lenient approach to *kos shel ikrin* (sterilization by ingesting a substance) and a more stringent one for *sirus b'yadayim* (physical sterilization). Still, we

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16. משנה תורה איסורי ביאה ט״ז:י״ג;י״א. Note that the *Sefer Hachinuch* 291:2 uses the exact same language regarding *sirus* of women.
17. מגיד משנה שם ס״ק י״א
18. ב״ח ד״ה ואשה
19. שם ד״ה ואפילו
20. אה״ע ה׳: י״א
21. לשון הש״ע: ״והמסרס את הנקבות בין באדם בין בשאר מנים פטור אבל אסור״

are not told what type of *issur* this is. Is it biblical or rabbinic? Exactly how stringent is this and how would it affect a practical application of the question.?

The Vilna Gaon[22] suggests that the ban is biblically based, from an all-inclusive reading of Leviticus 22:25. In this the Gaon clearly follows the *Tanna Kamma* of *Torat Kohanim* and *Tosefta* espousing the same view. Thus we now have one major view that *sirus* for women is biblically forbidden.

On the other hand, the *Turei Zahav*[23] says quite the opposite. Following the many *Rishonim* on the Gemara as well as R. Yehuda in *Torat Kohanim* he states that there is no *issur sirus* for women. Aside from the other sources, the *Turei Zahav* offers a biological reason.

> There is no *issur* to destroy female reproductive organs for they are not outside the body as are male organs. Therefore, there is no real ban on castration by hand (*b'yadayim*) even with an actual act.

Because male and female genitals are simply different, says the *Turei Zahav*, the conceptual act of castration does not apply to women. As a result, his understanding of Rambam's use of *patur* would mean "permitted."

A number of responsa refer to the question of *sirus*. These include more stringent approaches as well as lenient ones.

The most detailed as well as most negative approach comes from R. Moshe Feinstein, who deals with the issue four separate times. His earliest response[24] (dated 1956) takes up the case of a woman suffering from both physical and psychological illness, and her doctor's wish to perform a tubal ligation. R. Feinstein takes the position that *sirus* is biblically forbidden, citing the opinion of the Vilna Gaon. He believes that even those holding *sirus* as only rabbinically forbidden would agree in this case that no *heter* exists since the dangers (in R. Feinstein's opinion) are not that great.[25] He

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22. ביאור הגר״א, שם ס״ק כ״ה
23. טורי זהב שם ס״ק ו׳
24. אגרות משה אה״ע א׳ סימן י״ג
25. טור אבן העזר ה׳ discusses the permissibility of *sirus* for health reasons.

does, however, permit use of alternate means of birth control to prevent conception.

His second selection[26] (dated 1963) deals with a mentally ill woman who was to be institutionalized. Part of her illness involved an inability to control her sexual appetite, and sterilization was requested to control conception and birth. Here, R. Feinstein cites his previously mentioned position of a biblical ban on *sirus* based on the Gaon's opinion. However, R. Feinstein moves away from this approach and proceeds to quote those who hold *sirus* as only rabbinically forbidden (they are not mentioned by name). He finally permits tubal ligation in this case for the woman's benefit. He calls it איסורא זוטא, a minor prohibition, because it is not punishable (following the *Shulchan Aruch* and the *Magid Mishneh* on the Rambam). Interestingly, he advises that the operation be done by a non-Jewish surgeon. This seems to side with one opinion in the Gemara[27] which holds that non-Jews are also forbidden from causing castration by virtue of the Noahide laws.

In a *tshuva* dated 1968[28] R. Feinstein deals with a woman who had given birth to deformed children and wished to have no more. He offers here a detailed discussion of whether *sirus* is forbidden biblically or rabbinically. He concludes that either way, the ban is too stringent to breach here and does not permit ligation. He does permit use of a *moch* (a contraceptive mentioned in the Talmud, analogous to a diaphragm) for a limited period of time in the hope that the deforming malady will disappear. R. Feinstein reasons that there is no immediate danger to the mother's life itself and therefore no grounds to permit sterilization.

His fourth response[29] (dated 1972) deals with the case of a woman who had given birth to blind children. R. Feinstein again reiterates his position forbidding sterilization. He holds here that there is no guarantee future children will be born blind, relying on

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26. אג״מ או״ח ב׳ פ״ח
27. סנהדרין נ״ט: ד׳ מצוות נצטוו בני נח ... ר׳ חידקא אומר אף על הסירוס״. ועיין גם ב״מ צ״ו: ושו״ע אה״ע ב׳:י״ד
28. אג״מ אה״ע ג׳ י״ב
29. שם י״ג

the assumption of *rov* - that most children are born healthy. Again, he states that when there is no overriding danger to the mother's life or health, ligation is not permitted.

R. Yechiel Yaakov Weinberg writes of a case similar to R. Feinstein's second one - that of a mentally deranged woman who required sterilization for her own protection.[30] While his final answer is similar to R. Feinstein's - to permit it - his theoretical framework is different. He refers to *sirus* as איסורא בעלמא and cites only the lenient approaches mentioned above, including the *Bach*. His language regarding the general severity of *sirus* is much less strict than R. Feinstein's, but also less detailed.

R. Weinberg echoes this lenient approach in another *tshuva*,[31] on the question of whether a weak woman may use a *moch* or diaphragm before intercourse to prevent conception. His responsum centers on the question of whether a woman is liable for *hashchatat zera* (destruction of male seed) through use of a *moch* and when it might not be permitted. But twice in this responsum he writes,

> Even though a woman is not commanded regarding *sirus* she is forbidden to destroy seed... Destruction of seed is not like *kos shel ikrin* or *sirus* which are allowed for women...

Another lenient position is offered by the *Chatam Sofer*[32] who also holds *sirus* does not apply to women, following the aforementioned *Rishonim* and Rav Yehuda. His reasoning, too, is based on the biological differences between men and women. However, he inserts a new dimension by redefining the biblical verse upon which the entire issue is based - לא תעשו - as referring to women's sterilizing men. Thus, according to this view, a woman may not castrate a man but she would be permitted to undergo *sirus* herself. The *Chatam Sofer* offers a proof from the verse לא תקיפו[33] which is interpreted similarly: a woman may not shave a man's *payot* but she may shave her own. In both cases, the ban on the act

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30. שו"ת שרידי אש ג:כ"א
31. שם י"ד
32. שו"ת חתם סופר חלק ה' (חו"מ) קפ"ה
33. ויקרא י"ט:כ"ז

applies only if the male is the recipient of the act.[34]

R. Ovadiah Yosef makes a passing reference to the question in a *tshuva* regarding the issue of a nursing mother who becomes pregnant and wishes to take a drug to abort the fetus. He writes,

> Regarding *sirus b'yadayim* (as opposed to oral sterilization) there is an *issur* applicable to a woman as is written in *Even HaEzer*.[35]

He does not give further details of the *issur*.

R. Yitzchak Weisz[36] responds to a query whether a Jewish doctor may sterilize a non-Jew. He concludes this is forbidden, as the ban on castration applies to non-Jews as well as Jews. One of his sources is the commandment of *pru u'rvu* which he interprets as applicable to non-Jews in a general way. In reference to our question, R. Weisz writes, that since women are not included in the commandment of *pru urvu*, they are also not included in the ban on *sirus*. This assumes that the issue of *sirus* is tied to the *mitzva* of having children.[37] In other words, a male (Jewish or not) is commanded to have children and would be forbidden to destroy the organs facilitating that process.[38] A female is not included in this and would be allowed to tamper with those organs.[39]

R. Weisz's next response[40] touches on the issue of temporary

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34. Also see עצי ארזים brought down in אוצר הפוסקים על אב"ע דף קכ"ד and also ש"ע יו"ד קפ"א:ו' which uses the same approach and the same proof from לא תקיפו. He suspects, though, that while the *sirus* ban does not apply to human females, it may still apply to female animals. Some authorities hold that the prohibition of *sirus* applies only to the doer, not to the recipient of the act. See אוצר הפוסקים חלק א' דף רמו, אות ס"ג.
35. שו"ת יביע אומר חלק ד' אב"ע סימן א'. In this particular case, R. Yosef allows use of the drug because abortion by oral means is only a rabbinic prohibition and the welfare of the nursing baby takes precedence.
36. שו"ת מנחת יצחק חלק ה' ס' י"ב
37. Whether or not a sterile man would be allowed to get married is discussed by פתחי תשובה אבן העזר ה' אות ט'.
38. Would there be a difference in the halacha if the man had already fathered children? See אוצר הפוסקים חלק א' דף רמו אות ס"ז.
39. But see מנחת חינוך רצא which does not accept the premise that *sirus* and *pru u'rvu* are connected. Also see שו"ת יהודה יעלה חלק ג' סימן כ"ו and our earlier reference to מלבים על ויקרא כ"ב:כ"ה.
40. שו"ת מנחת יצחק חלק ה' ס' י"ג

sirus - rendering a person sterile for a limited period.[41] He continues his previous logic, stating that *sirus* for a woman is less of a problem than for a man, and is inclined to permit temporary *sirus* for therapeutic reasons. A point worth pondering is whether genuinely temporary ligation might be more permissible under this reasoning. Gynecolgists say that while 50 to 70 percent of tubal ligation can be reversed, women do not undergo the operation with intent to reconnect the tubes. What if medical science were to advance the procedure to the point where it could be fully reversible? Would this affect the halacha?

There are variations on the surgical technique preventing conception in the female. Surgeons sometimes use a ring to close the fallopian tubes without directly severing them, but having the same contraceptive effect. Little has been written on the subject from a halachic perspective, but it is possible that the difference in procedure may have halachic implications. Perhaps the ring is more acceptable because it does not sever or directly destroy the tubes. This area must await further study by *poskim*.

Summary:

1. *Sirus* had its roots in Leviticus 22:24-25. Our question centers on whether the Torah's prohibition of sterilization applies to women or not.

2. The Talmud in *Shabbat 110b* amplifies the ban for men and mentions the dispute as to whether women are obligated to have children. This affects the issue of sterilization if the two are connected.

3. The *Tanna Kamma* in the *Torat Kohanim* and *Tosefta* holds *sirus* to be biblically forbidden for men and women. This view is based on an inclusive reading of the verse in Leviticus and is followed by the Vilan Gaon.

4. R. Yehuda in the *Tosefta* holds *sirus* to be *patur*, non-

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41. אוצר הפוסקים ח"א דף רמו אות ס"ט brings various opinions on this issue, in particular on the question of a man who wants to do this so that he will be free to engage in Torah study.

punishable. This is the view of the Rambam as well. The *Magid Mishneh* and *Shulchan Aruch* understand this to mean a non-punishable offence.

5. R. Yehuda in *Torat Kohanim* holds *sirus* simply does not apply to women. This is also the view of most *Rishonim* on *Shabbat* 110b and the *Turei Zahav*. Reasons include the biological differences between men and women, the resulting differences in sterilization procedure, and the fact of the biblical source-text being in the masculine.

6. Among *poskim* there is a wide divergence of views ranging from the detailed strictness of R. Moshe Feinstein to the varying lenient approaches of R. Yechiel Yaakov Weinberg, the *Chatam Sofer* and R. Yitzchak Weisz.

Halachic Consideration In Marriage Counseling and Sex Therapy

Dr. Sylvan Schaffer

The high divorce rate in modern society is a barometer of the toll which a variety of stresses are taking on marriage.

In an attempt to stem the tide of divorce, marriage counselors, clergy and mental health professionals work with couples to alleviate some of the problems which threaten the relationship. This process, known as *shalom bayit,* has long been a valued part of Jewish tradition, with Aharon Hacohen serving as one of its first practitioners.

Most marriage counseling consists of relatively routine family problem solving involving few halachic complications. However, there are some areas which pose difficulties for the counselor as well as for the couple. In such areas, the halachic enthusiasm for *shalom bayit* may be counterbalanced by certain prohibitions relating to the couple's relationship or to the therapeutic techniques employed in counseling.

This article seeks to identify the areas of potential halachic concern in order to heighten the counselor's awareness of the issues which may warrant halachic consultation.

Shalom Bayit

The Jewish conception of marriage counseling is founded on

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the important policy of *shalom bayit,* marital harmony. Perhaps the first and most famous Jewish marriage counselor was Aharon HaCohen as it says:[1]

הוי מתלמידיו של אהרן, אוהב שלום ורודף שלום.

"Strive to be a disciple of Aharon, love peace and run after it."

Aharon accomplished his marriage counseling by humbling himself in order to reconcile husband and wife.[2] As a result, many of the children resulting from his successful counseling were named in his honor.[3]

In fact, *shalom bayit* is considered to be so important that halacha allows certain latitude for those who wish to foster it. This latitude is divinely inspired:[4]

> גדול השלום שאף הקב"ה שינה בו דמעיקרא כתיב "ואדוני זקן" ולבסוף כתיב "ואני זקנתי".
>
> G-d Himself, in quoting Sarah, changed the language she used in order not to embarrass Abraham about his advancing years.[5]

Similarly, the Torah allows the name of G-d to be erased for the sake of *shalom bayit.*[6]

This latitude has halachic implications. According to the Rambam:[7]

> היה לפניו נר ביתו ונר חנוכה או נר ביתו וקידוש היום נר ביתו קודם משום שלום ביתו, שהרי השם נמחק לעשות שלום בין איש לאשתו. גדול השלום שכל התורה נתנה לעשות שלום בעולם. . .
>
> If one has a choice to light only the candle of Chanukah or the candle of his home, one should light the candle of the home because of the need of marital harmony for which

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1. אבות פ"א: י"ב
2. מברטנורא שם ד"ה "הוי מתלמידיו..."
3. אבות דרבי נתן פרק י"ב: ד'.
4. יבמות סה:
5. בראשית י"ח: י"ב, י"ג
6. מכות י"א., סוכה נ"ג: נדרים ס"ו:
7. רמב"ם הלכות חנוכה ד' י"ד

even the name of the Almighty may be erased. The Torah was given to enhance the cause of peace.

Additionally, *shalom bayit* has been a factor in recent halachic decisions relating to such matters as birth control.[8]

Also, *shalom bayit*, as it relates to intimate relations between husband and wife, is distinct from the commandment of procreation[9] and includes the satisfaction of both husband and wife.[10]

Thus, it is clear that halacha recognizes the importance of marital harmony, as well as the role of third parties in helping couples achieve that harmony. However, while some additional latitude may be allowed in order to help achieve this goal, it is important to consider whether *shalom bayit* provides marriage counselors with carte blanche, or whether, despite the policy of fostering domestic peace, there are nevertheless limitations on marriage counseling. These halachic limitations may take two forms: a) the *types* of relationships for which marriage counseling is sanctioned, and b) what *techniques* are acceptable for halachically-sanctioned marriage counseling.

This article is not intended to convey rules of *psak* (decision) but rather to identify issues and situation which may necessitate a consultation with competent authorities concerning the specific issues raised in the marriage counseling cases at issue.

Types of Relationships Addressed by the Halacha

Generally speaking, *shalom bayit* is intended to encourage halachically-sanctioned marital relationships and to help couples carry out the commandment of פרו ורבו "be fruitful and multiply."

There are several types of relationships which are not halachically sanctioned:

1) A cohen (priest) may not marry a divorcee, a convert, a *zona* or a *challala* (a woman who was born out of a forbidden relationship with a כהן).

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8. שו"ת כתב סופר כ"ו.
9. רמב"ם אישות ט"ו א.
10. יבמות ס"ב: עירובין ק:

שלש נשים נאסרו על הכהנים: גרושה, זונה וחללה.[11]

This is derived from the verse:

אשה זונה וחללה לא יקחו ואשה גרושה מאישה לא יקחו.[12]

A woman who is a harlot or profaned or divorced from a man shall not be taken (in marriage) by them.

Community concern for the violation of this prohibition is expressed in the Talmud:[13]

מנין דאם לא רצה דפנוי? ת"ל "וקדשתו", בעל כרחו[14]

How do we know that if he [the cohen] does not want to [observe the rules of marriage] that he is compelled? For it says: "and you shall sanctify him", even against his will.

The halacha does not approach this type of relationship passively, but actively discourages its perpetuation.

2) Any of the incestuous relationships enumerated in the Torah.[15]

3) A Jew and a non-Jew, as it is written, ולא תתחתן בם[16] "and you shall not marry them". The penalty for such a relationship is מלקות (lashes),[17] and in the absence of punishment by a rabbinic court the punishment is כרת.[18]

4) An adultress is forbidden to her husband and to the man with whom she committed adultery.[19]

Once the requirements for סוטה are met, the woman may not have relations with either her husband nor the man with

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11. ש"ע אבן העזר סימן ו'; רמב"ם איסורי ביאה י"ז.
12. ויקרא כ"א ז'.
13. יבמות פ"ח: שו"ע אבן העזר י' א'.
14. ויקרא כ"א ח'.
15. ויקרא י"ח: ו'-י"ח.
16. דברים ז': ג'.
17. רמב"ם איסורי ביאה י"ב: א'; שו"ע אהע"ז ט"ז: א', ב' under certain circumstances קנאים פוגעים בו was also applied.
18. *Karet* — divine punishment through premature death. רמב"ם שם ו'
19. במדבר פרק ה' י"ב-ל"א.

whom she committed adultery.[20]

5) A Jew and a *mamzer:* לא יבא ממזר בקהל ד'[21]

The problem of *mamzer* is not uncommon and includes many of the children born as a result of second and third marriages when the previous marriage was not terminated by a *get* (Jewish divorce); children of incestuous relationships forbidden by the Torah are also considered *mamzerim.*[22]

If facts come to the attention of a marriage counselor which raise the possibility of one of the above-mentioned forbidden relationships, a competent rabbinic authority should be consulted to determine if such status is applicable based on those facts. For example, the rules concerning סוטה are quite complex, and a halachic label should not be applied to the situation based only on the report of the wife. Rather, the facts should be presented to a *posek* who could then determine whether such a status is applicable.

Assuming that the *posek* determines that the relationship is one that is forbidden, the next question facing the counselor is what course of action he or she should pursue. Should the marriage counseling be continued, and thus, if successful, perpetuate the forbidden relationship? Should the therapist abstain and not become involved in counseling such couples? Or should the counselor follow the teaching

הוכח תוכיח את עמיתך ולא תשא עליו חטא[23]

"and you shall rebuke your neighbor . . ."

and tell the parties that they are involved in a forbidden relationship which should be terminated?

In discussing these courses of action with an authority, the counselor should consider several factors. Is the counselor's goal to

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20. שו"ע אבן העזר קע"ח: י"ז.
21. דברים כ"ג: ג'.
22. רמב"ם איסורי ביאה ט"ו א'; שו"ע אבן העזר ד':ו"ג.
23. ויקרא י"ט:ו"ז.

save the marriage, or is the goal non-directive,[24] with the therapist simply acting as a sounding board and catalyst for the couple in order to help them make up their minds to reconcile or divorce, without any particular preference on the part of the therapist? Also, the counselor should consider his or her professional ethics regarding confidentiality and committment to the wellbeing of his patients.

One consideration related to the first option, counseling such couples, is the counselor's responsibility under

לפני עור לא תתן מכשל[25]

"Do not place an obstacle before the blind".

The counselor, just as any other Jew, is not permitted to help a fellow Jew commit a sin. This possibility arises since, as a result of successful counseling, the couple may remain together and continue to engage in the forbidden activity. Again, specific facts should be provided to the *posek* since the application of לפני עור is not automatic. For example, it may not apply in a situation which is not תרי עברי נהרא[26] which is the figurative way of saying that there is another way that the person could accomplish the forbidden act (he does not require your help to cross the river to commit it). In such a situation, although the prohibition may not be לפני עור, it may involve the rabbinic prohibition שחייב להפרישו מהאיסור,[27] one is obligated to prevent a fellow Jew from doing that which is forbidden. This should be determined on the facts of each case by a *posek*.

The second option, abstention, or שב ואל תעשה, may provide practical problems since the forbidden nature of the relationship may not become apparent until well into the counseling process

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24. Rogers, C., *Client Centered Therapy*, Houghton Mifflin, 1951.
25. ויקרא י״ט:י״ד.
26. עבודה זרה ו׳:
27. תוס׳ שבת ג׳. ד״ה ״בבא דרישא...״
רמב״ם הל׳ שמיטה ויובל פ״ח הל׳ א׳
גיטין ס״א.; ברטנורא סוף פ׳ הניזקין ד״ה ״ומחזיקין״.
28. תוס׳ שבועות ל: ד״ה ״אבל״.

when trust and rapport have been established. For example, if the wife reveals an infidelity to the counselor (not in the presence of the husband) the counselor is faced with several questions:

Should the wife's statement be accepted on its own as factual (without corroboration) and should the counselor relate this report to the husband in possible violation of her right to privacy (which itself may be halachically recognized[29])? Can the therapist withdraw in the midst of the counseling process? If the wife's statement alone does not require (or permit) that the husband be told, what reason should be given if the therapist feels he must withdraw?

The third option, rebuking the couple under הוכח תוכיח is a topic worthy of a separate article. However, briefly stated, הוכח תוכיח involves advising and even rebuking a fellow Jew in order to save him from further sin, occasionally even using very strong language.[30] However, before a counselor independently decides to rebuke a couple, a halachic authority should be consulted since הוכח תוכיח is not automatic. For example, it may not be applicable in a situation where it is clear that the rebuke will be scorned and disregarded.[31]

Thus when faced with the possibility of counseling a couple whose relationship may be forbidden, specific halachic guidance should be sought to determine the status of the couple and the responsibility of the counselor.

Techniques Used in Marriage Counseling

Many different techniques are used by marriage counselors. Most of these techniques are designed to improve the day to day interactions of husband and wife by making them aware of maladaptive behavior patterns and/or personality characteristics which can lead to marital dissatisfaction. The particular style, method and tone of the counseling may vary according to the therapeutic training and orientation of the therapist; i.e. verbal

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29. Rabbi A. Cohen "Privacy: *A Jewish Perspective," Journal of Halacha and Contemporary Society* I (1981).
30. For a description of how far one should carry תוכחה see :ערכין טז.
31. :יבמות ס"ה

insight orientation (psychoanalytic), behavior and environmental change (behavior therapy), or family structure (family therapy). In general, however, most orientations share the goal of fostering a more harmonious relationship in which both spouses will be sensitive to other's needs, communications will be unambiguous, requests and demands more reasonable, problems solved cooperatively, and positive interactions between husband and wife will be maximized.

To accomplish this, issues such as finances, in-laws, friends, children, intimacy, and work may be discussed. In some situations, the couple will engage in role-playing as an exercise to enhance their communications and sensitivity. The counseling may also involve assertiveness training to aid the couple in exprssing their feelings and needs in a direct manner which is neither passive nor aggressive. The above-mentioned techniques *per se* rarely involve halachic complications, though some of the issues which come up may have religious implications.

One such issue which is frequently mentioned in marriage counseling concerns relations with the couple's parents and hence may touch on the halacha of כיבוד אב ואם, respecting one's parents. This problem may arise when one spouse is overly involved emotionally with his or her parents, or when the parents are overly involved with the day-to-day life of the couple. This may result in a feeling of conflicting loyalties by the spouse involved, who will be torn between love for both spouse and parents, with the additional complication that the spouse/offspring is still required to respect his parents. A marriage counselor would seek to resolve this conflict by helping each party understand the appropriate roles and relationships for mature adults. Such a resolution need not violate כיבוד אב ואם since the ensuing relationship can still be loving and respectful, without over-entanglement of parent and progeny. In fact, such a relationship is part of the normal developmental process as described by the Torah:

על כן יעזב איש את אביו ואת אמו, ודבק באשתו והיו לבשר אחד[32]

32. בראשית ב׳:כ״ד

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

Another aspect of marriage counseling, the treatment of problems related to physical intimacy, may involve halachic considerations. Such treatment, often referred to as sex therapy, may be divided into two primary approaches: 1) verbal insight oriented therapy; and 2) the behavioral, learning theory approach, which may involve specific activities by the couple, and sometimes by the male alone.

Both these approaches may involve the couple in activities which involve two halachic prohibitions:

1) איסור הרהור forbidden thoughts.

2) השחתת זרע destruction of the seed.

Of these two prohibitions, *hirhur* is broader since it includes both verbal and behavioral counseling and may be applied to women as well as men.

The position of our sages regarding *hirhur arayot* is stated a number of times:

א״ר פינחס בן יאיר אל יהרהר אדם ביום ויבא לידי טומאה בלילה

One should not fantasize during the day in a manner which will lead to defilement at night.[33]

כל המביא עצמו לידי הרהור אין מכניסים אותו למחיצתו של הקב״ה.

One who brings himself to think impure thoughts will be excluded from the heavenly sphere.[34]

הרהורי עבירה קשה מעבירה[35]

The thoughts of sin are worse than the actual sin.

The prohibition of *hirhur issur* may be derived from two sources:

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33. כתובות מ״ו:
34. נדה י״ג:
35. יומא כ״ט.

ונשמרת מכל דבר רע[36]

You shall keep yourself from every evil thing.

ולא תסורו אחרי עיניכם[37]

[and you shall not go] after your eyes.

The first verse relates the source of the prohibition to the need to avoid thoughts which could lead to קרי, emission.

However, the second verse refers to prohibited thoughts independent of the risk of קרי[38] and is similar to the prohibition of thoughts of idolatry, אחרי לבבכם[39]. While the first verse would be applicable only to males, for whom there is a risk of קרי, the second verse applies to woman as well.

This prohibition has been codified:

אסור לאדם שיקשה עצמו לדעת או יביא עצמו לידי הרהור.[40]

In the course of counseling a couple in matters of marital and sexual difficulties, *hirhur arayot* may occur. It is tempting for the therapist to assume that halachic problems are avoided because of the medical component of the therapy. However, not every form of therapy is automatically sanctioned because of its curative value.

בכל מתרפאין חוץ מעבודה זרה, גילוי עריות ושפיכות דמים.[41]

All things may be used for a cure except for idolatry, forbidden sexual acts, and bloodshed.

This rule has been defined as including even the thoughts about *giluy arayot*.

אמר ר״י אמר רב: מעשה באדם אחד שנתן עיניו באשה אחת והעלה ליבו טינא ובאו ושאלו לרופאים ואמרו אין לו תקנה עד שתבעל, אמרו חכמין ימות ואל תבעל לו, תעמוד לפניו ערומה,

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36. דברים כ״ג:י׳.
37. במדבר ט״ו:ל״ט.
38. אגרות משה אבן העזר סימן ס״ט.
39. See note 35.
40. שו״ע אבן העזר כ״ג:ג׳.
41. פסחים כ״ה.

ימות ואל תעמוד לפניו ערומה, תספר עמו מאחרי הגדר, ימות ולא תספר עמו מאחרי הגדר.[42]

There was a man who fell in love with a woman so that his heart was consumed by the passion and his life was endangered thereby. The doctors said that his only cure was to have relations with her; the Sages said, "Rather let him die." Then the doctors said to let her stand naked before him. Again [the Sages said] "Rather let him die." [The doctors then said] "Let her speak to him from behind a fence." [The Sages said] "Rather let him die than she should speak with him from behind the fence."

While there seems to be some ambiguity about the facts in that case, the point seems to be that even the *thoughts* about forbidden acts are considered as prohibited as the act itself.

However, some forms of *hirhur* may not pose an insurmountable halachic problem:

מותר לאדם להביט באשתו אע"פ שהיא נדה והיא ערוה לו אע"פ שיש לו הנאה בראייתה הואיל והיא מותרת לו לאחר זמן אינו בא בזה לידי מכשול[43]

A man may look upon his wife even when she is forbidden to him, since after a time, she will be again permitted to him.

However, fantasies about another woman would not be allowed.[44]

Again, it should be noted that most marriage counseling involves everyday relationships and problems and not הרהור איסור.

While part of sex therapy concerns itself with maladaptive aspects of a relationship which may inhibit intimacy, other aspects of the therapy may concentrate on the partner who manifests a

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42. סנהדרין ע"ה., רמב"ם הל' יסודי התורה פ"ה הל' ט'. יעבור:יהרג for some exceptions to שו"ע יורה דעה קנ"ז א'; רמב"ם יסודי התורה פ"ה הל' ב'. seeואל

43. שו"ע אבן העזר כ"א ו'; רמב"ם איסורי ביאה כ"א ד'.

44. רמב"ם איסורי ביאה כ"א הל' י"ב. For discussion of *hirhur* in a case of רפואה see אגרות משה אבן העזר נ"ו

difficulty, i.e. impotence in the husband. Sometimes the treatment may be medical (hormonal or psychopharmacological) or it may be behavior therapy. It is the latter method which raises the second prohibition, השחתת זרע (destruction of the seed) for the male (biologically there is no corresponding השחתה for the female).

In addition to treating the marital issues, a behavior therapist may also utilize methods such as behavior rehearsal and systematic desensitization (the gradual lessening of anxiety concerning a topic or act through the imagining or viewing of the stressful scene coupled with relaxation exercises) to treat such disorders as impotence, premature ejaculation and lack of desire (all of which can prevent the fulfillment of פרו ורבו). A common denominator of these methods is that they involve the sexual arousal of the husband and hence the risk of השחתת זרע. *Haschatat zera* is derived from לא תנאף, "thou shalt not commit adultery",[45] and is considered to have been the sin of דור המבול, the generation punished by the flood,[46] and ער ואונן, Er and Onan.[47].

The prohibition has been codified:

> אסור להוציא שכבת זרע לבטלה ועון זה חמור מכל עבירות שבתורה . . . אסור לאדם ליקשה עצמו לדעת[48]
>
> One must not emit his seed in vain, this is one of the most severe sins in the Torah, ... a man must not intentionally bring himself to the point of arousal.

The prohibited act is to emit the seed in *vain* (לבטלה). Thus, it is possible that there are some instances when as part of therapy a man would be permitted to emit the seed, and it would be considered לצורך, for the purpose of procreation. Talmudic mention of this possibility concerns the need for the Rabbis to determine if a certain man could get married:

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45. שו״ע אבן העזר כ״ג:א׳; רמב״ם איסורי ביאה כ״א:י״ח.
45. שמות כ׳:י״ג.
46. רש״י נדה י״ג. ד״ה ״כאלו מביא מבול״.
47. יבמות ל״ד:
48. שו״ע אבן העזר כג: א׳ ג׳; רמב״ם איסורי ביאה כ״א:י״ח י״ט.

ולאביי מעברינן קמיה בגדי צבעונים כדי שיהרהר באשה ונקרי[49]

Abaye said that he should be shown the garments of women, become aroused, and emit his seed.

Since the purpose of the emission cited in the Talmud was to determine if the person was eligible to marry, this emission was לצורך and not לבטלה. This permissive reading is according to those who hold that השחתת זרע is related to פרו ורבו.[50]

It should be noted that when such emission is permitted, i.e. for medical reasons, to check fertility, it must be done in the natural way (ביאה כדרכה) preferably not in the doctor's office.[51]

It is not clear whether the permission granted in the above cases would extend to sex therapy where פרו ורבו is the goal. A specific *psak* to that effect would clarify this matter.

Based on the *psak* of Rav Feinstein,[52] it seems that if there were to be a *psak* including sex therapy as an acceptable reason for emission, the following circumstances would probably need to be present: the counseling would be for a properly married husband and wife, it would be for the purpose of procreation, the act would be done in privacy, in a natural manner, and the husband should think only of his wife. Again, these factors are not a formula for *psak* and a *posek* should be consulted regarding the facts of each case.

Two other types of sex therapy should be mentioned, although only briefly as their use is relatively infrequent:

1) Surrogate partners
2) Transsexual surgery

The use of surrogates, persons who substitute for the spouse or act as the partner of a single person, presents major halachic concerns which cannot be considered here.

Transsexual surgery involves persons who are biologically one gender, but psychologically identify with the other. While such a problem warrants psychotherapy if desired by the person, the

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49. יבמות ע"ו.
50. תוס' סנהדרין נ"ט: ד"ה "יהא..." אחיעזר ח"ג כ"ד: ד'.
51. אגרות משה סימן ע'.
52. שם.

surgical alteration and removal of the procreative organs would be forbidden under halacha:[53]

אסור להפסיד אברי הזרע בין באדם בין בבהמה.

One must not destroy the procreative organs in humans or animals.

The counselor approached for help by a transsexual will need specific halachic guidance.

Conclusion

As a result of the increased stress on the modern family and the increase in the divorce rate, more couples are seeking out the assistance of marriage counselors. Such counselors may help in the preservation of the marital and family unit, and as such their work is laudable as part of a long Jewish tradition of *shalom bayit*. Such acitivity is encouraged by the halacha which provides additional latitude to help achieve marital harmony. However, there exist halachic considerations concerning which types of couples should be seen for counseling as well as which techniques should be employed and in what form. The latter consideration is not solely for the sake of the religious belief of the counselor, but also for the sake of the couple's peace of mind since some couples may object to practices which seem to go against their religious observance.

Therefore, although most marriage counseling does not involve halachic complications, in those situations in which such questions arise, it is advisable that the counselor seek guidance based on the facts of each particular case so that the counselor may act in consonance with proper religious, ethical and professional guidelines.

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53. רמב"ם איסורי ביאה ט"ז י' שו"ע אבן העזר ה':י"א.

Bishul Akum

Rabbi Moshe Bernstein

The Jewish people, endowed by the Torah with a unique identity and destiny, has sacrificed much to preserve its character. The Sages, in their constant zeal to protect *Klal Yisrael,* enacted numerous precautionary measures to prevent the inroads of assimilation which threaten the continuity of the Jewish people. Among these measures is the halacha of *bishul akum*[1] בישול עכו"ם, which prohibits the consumption of certain foods when cooked or prepared by non-Jews. The Rabbis were motivated by the concern that familiarity and a certain level of intimacy might develop between Jews and non-Jews, which could lead to assimilation and intermarriage. In this article we will discuss aspects of this halacha.

In *Avoda Zarah,*[2] Rashi mentions two different reasons for the halacha of *bishul akum:*

1. משום חתנות — to prevent intermarriage

2. שלא יהא ישראל רגיל אצלו במאכל ובמשתה ויאכילנו דבר טמא — that a Jew not accustom himself to eat and drink with non-Jews for fear that the Jew might be given forbidden food to eat.

It is clear from the above that this *issur* applies to foods regarding which there is no problem from the point of view of kashruth. It was certainly not necessary for Rabbis to enact a law forbidding the eating of food already prohibited by the dietary laws! However, the consumption even of permissible foods cooked

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1. יורה דעה קי"ג

2. Rashi, Avodah Zarah 38a ,ד"ה מדרבנן

by a non-Jew might increase the possibility that forbidden foods might be served concomitantly or that intimacy leading to intermarriage would develop.

The Talmud points out that there are certain limitations to this *issur*. Foods which are usually eaten in a raw state are not subject to the *issur* of *bishul akum*[3]. Thus, cooked fruit, for example, would not fall under this stricture since it is normally eaten raw. The same would apply to water, or foods of which water is the major component, such as coffee or tea.[4]

In addition, the Talmud mentions that *bishul akum* applies only to food which is usually served as part of a meal in conjunction with bread,[5] which is considered as the mainstay of the meal. For this reason, candy, chocolate, and other sweets and similar types of snack foods do not fall within the purview of *bishul akum* since they are not customarily served as part of a meal.[6]

A common problem in respect to *bishul akum* centers around restaurants, hotels, and homes where non-Jewish individuals are employed. Although, as Tosafot in *Avodah Zarah*[7] points out, the reasons for prohibiting *bishul akum* are not relevant when the non-Jew is employed in a Jewish home or business, nevertheless, Rabbenu Tam is quoted as emphatically prohibiting food cooked by non-Jews even when in a Jewish home. It is his opinion which is codified in the *Shulchan Aruch*[8] and thus forms the basis for normative halachic conduct. According to the halacha, a non-Jew may not cook something for a Jew, even in his home. However, if he did do it, *ex posto facto*, the food is permitted (בדיעבד). As far as the utensils used in the cooking of this food, the *Shulchan Aruch* offers two opposing halachic decisions regarding them.[9]

The prohibition of *bishul akum* applies only when the non-Jew

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3. גמ' ע"ז לח.
4. שו"ע יו"ד, סי' קי"ד, ש"ך, ט"ז סק"א.
5. גמ' ע"ז לח
6. דרכי תשובה, סי' קי"ג, ס"ק י"ב, ט"ו.
7. דף לח. תוד"ה אלא מדרבנן.
8. שו"ע יו"ד, סי' קי"ג, סעי' א'.
9. עיין שו"ע יו"ד, סי' קי"ג, סעי' ד', בהגה"ה ובנו"כ.

performed the entire cooking process. If, however, a Jew participated in some way in the cooking procedure, e.g., lighting the fire or oven (even to the extent of adding more fuel to an already-existing fire), placing the food on the fire, or aiding the cooking by stirring, then the cooked product does not fall within the scope of *bishul akum*.[10] In this regard there is some controversy as to whether the existence of a pilot light lit by a Jew can suffice to remove the problem of *bishul akum*. In his gloss to *Shulchan Aruch*,[11] Ramo maintains a lenient position, but the מחבר, Rabbi Yosef Karo, is of the opinion that in order for the *issur* of *bishul akum* not to be operative when a Gentile prepares food, the Jew must do some significant action in connection with the cooking. Obviously, igniting a pilot light which will later be employed to ignite the actual fire under the pot would not fall within R. Karo's definition of sufficient Jewish action. Ashkenazic Jews, who generally follow Ramo, are thus far more lenient with respect to this aspect of *bishul akum* than are Sepharadim, who follow the *Shulchan Aruch*.

The strictures of *bishul akum* do not apply to bread which is baked for sale by a non-Jewish baker.[12] The Rabbis were more lenient in respect to baked goods since these are so critical to human diet and sustenance.[13] However, home-baked bread and cakes baked by a non-Jew for Jews, not for commercial purposes, do come within the scope of *bishul akum* and are certainly prohibited.

The Talmud states that the only types of food prohibited[14] because of *bishul akum* are those which are עולה על שולחן מלכים "fit to grace the table of a king". In other words, the type of food which might be served at a wedding or a state dinner is liable to the strictures of *bishul akum*. This particular aspect of the law requires further clarification.

During the course of time, as fashions and appetites have

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10. שו"ע יו"ד, סי' קי"ג, סעי' ו' ז'.
11. יורה דעה שם ס"ק ז'.
12. שו"ע יו"ד סי' קי"ב.
13. שם, סעי' ב', ש"ך סק"ו.
14. גמ' ע"ז לח.

changed, certain foodstuffs have undergone a qualitative change from a culinary point of view. For example, the *Chochmat Adam*[15] writes that potatoes are to be considered עולה על שולחן מלכים, fit for a king's table, and therefore the *issur* of *bishul akum* applies to them. The *Aruch HaShulchan*, however, disagrees and points out that potatoes were indeed a delicacy in the days of the *Chochmat Adam* because of their rarity, and then they were truly fit to grace a royal table. However, in a more contemporary period, potatoes are readily available to even the poorest of people; thus they have lost a measure of their "exalted" status and cannot be considered food which graces the tables of kings. Albeit the *Aruch HaShulchan* reserves final decision on this matter, his discussion does imply that many factors must be considered in arriving at a determination of what can be categorized as "עולה על שולחן מלכים"; furthermore, this criterion is subject to change depending on time and locale.[17]

With respect to this point, a responsum by R. Avraham Alkalai (שו"ת חסד לאברהם) is quoted by *Darkei Teshuva*.[18] It seems to negate the point of view mentioned above. The subject of the responsum is a type of dough which was molded into strands and then fried; it was prepared by non-Jews. Prior to eating, the consumer would toast the dough noodles with honey and oil. The gist of the responsum is that the fried strips of dough are forbidden because of *bishul akum*, since they are a food which is served at a king's table עולה על שולחן מלכים and they cannot be eaten in a raw state. The author of the responsum points out that although fried dough would not be eaten by kings in the state in which it was cooked, it is nevertheless forbidden. His reasoning is that, in truth, food prepared for ordinary consumption is *never* as elaborate as that prepared for kings. Thus, he argues, if qualitative concerns were taken into consideration, no food would *ever* be covered by the *issur* of *bishul akum* unless it were literally being prepared for the king himself. This is patently an absurd and impossible

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15. כלל י עיי"ש ס"ק ד'.
16. עיי"ש ס"ק י"ח.
17. עיי"ש באריכות סי' קי"ג.
18. הובא בטור יו"ד סי' קי"ג.

conclusion. Therefore, he argues, we have to consider only the *type* of food being cooked in order to decide if *bishul akum* applies, and not be concerned with the *manner* of its preparation.

The above controversy is critical with respect to laying the groundwork for guidelines relevant to issuing *hechsherim* (kashruth certification) for products to be sold to consumers and prepared in factories. If, for example, a particular product is "fit for a king" only when prepared according to meticulous standards, with great emphasis on method of production, spices, seasonings, and the like — then does a cheaper, commercial brand of the same item which is clearly of inferior quality also fall within the scope of the laws of *bishul akum*? Or is it only the *kind* of food which is a relevant factor in applying the law? Does the *issur* apply equally and impartially to french fried potatoes and potatoes *au gratin*?

The Talmud in *Avodah Zarah* 38a states that if a Jew partially cooked an item of food until the state of מאכל בן דרוסאי — a state at which the food is just barely edible — and a non-Jew finished the cooking, the *issur* of *bishul akum* does not apply. Since the state of מאכל בן דרוסאי is an edible state, further cooking by the non-Jew does not change its halachic status and it is therefore considered food cooked by a Jew.

The Rashba comments that the reverse situation is likewise true. If a non-Jew cooked food until it reached the state of מאכל בן דרוסאי and a Jew completed the cooking, the food is nevertheless forbidden because of *bishul akum*. The Rosh[19], however, disagrees. He maintains that, although from the point of view of logic, the posture of the Rashba is theoretically correct, the Rabbis in fact did not legislate thus. The Rosh maintains that the Rabbis were lenient with respect to *bishul akum* when the factor of מאכל בן דרוסאי is operative. When a Jew cooks food until a partially edible state, we consider it to be בישול ישראל, "Jewish cooking"; even further cooking by a non-Jew then has no practical halachic effect. However, if a non-Jew cooks food till a semi-edible stage, מאכל בן דרוסאי, it is treated as incomplete cooking and further

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19. פסקיו למס' ע"ז פ"ב סי' ל"ב.

completion by a Jew renders it בישול ישראל, permitted food.

This controversy between the Rosh and the Rashba is reflected in the *Shulchan Aruch*. R. Yosef Karo, author of the *Shulchan Aruch*, decides in favor of the Rashba; the Ramo in his gloss to *Shulchan Aruch* favors the Rosh. (This leads again to differences in Ashkenazic and Sephardic practice.) The *Shach* points out that the majority of *poskim* follow the Rosh in this matter.[20]

The relevance of the above discussion becomes of crucial importance in the approval of certain cooked, frozen foods for kosher consumption. In many cases, frozen food manufacturers produce items which are to be heated in the home, but this "heating" actually completes the cooking processes and does not merely warm the food. In such a case, even if the frozen food is partially cooked by non-Jews, since the process is finished by the Jew in his own kitchen, the *issur* of *bishul akum* would not apply (if we accept the argument of the Rosh). However, if the frozen food is actually totally cooked and needs merely to be heated, but does not undergo a qualitative change, then the *issur* of *bishul akum* would apply.

The difference in halacha is noted by R. Akiva Eiger, who quotes the *Prisha* to the effect that mere warming is not considered as if the Jew completed the cooking process.[21]

In very broad strokes, we have tried to draw the outlines of the laws of *bishul akum*. Obviously, the scope of the halacha is a complicated one, with many details to be considered. Furthermore, as our Rabbis noted, its dereliction carries potentially severe consequences. In light of this, and since utensils used in *bishul akum* are considered as though forbidden foods had been cooked in them and require kashering,[22] it is essential that any question regarding *bishul akum* be brought to the attention of a Rav who is conversant with these halachot, so that he may render a proper and qualified decision.

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20. שו"ע יו"ד סי' קי"ג ס"ק יד.
21. שו"ע יו"ד סי' קי"ג חי' רע"ק ד"ה ויש מתירין.
22. שו"ע יו"ד סי' קי"ג, סע' ט'

On Maintaining A Professional Confidence

Rabbi Alfred S. Cohen

The right to privacy is a privilege very much in the forefront of our concerns. In the past few years in particular, it has been the focus of a gret deal of controversy — from the President of the United States, who claimed that his papers and conversations were inviolable, to the high school student who sued — and won — when his school locker was searched without his permission.

Although this is an issue which has surfaced only recently in the American public consciousness, it is a subject which Jewish thought and literature have dealt with extensively over centuries. That which is sought is the proper balance between the rights of a particular individual and the rights of civilized society, which may at times be diametrically opposed. In the present study, we will explore the halachic parameters directing the actions of the person who, by virture of his professional activities, is caught in the middle between these conflicting demands.[1]

1. This subject was dealt with in a general manner in an article *"The Jewish Perspective on Privacy"* in the Journal of Halacha and Contemporary Society, Vol. I, No. I. Here, however, I wish to elaborate specifically on those situations which pose a particular problem for a person whose professional activities cause

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To get an idea of the complex issues involved, let us consider an actual case which took place about two hundred years ago and which was eventually referred to Rabbi Yechezkel Landau, the world-renowned *Noda Biyehudah*. For a period of three years, a young man took room and board at the home of a certain family, during which time he was carrying on a clandestine affair with the lady of the house. Later, having repented his behavior, he became engaged to marry the daughter of that family. The questions which were brought to the attention of the *Noda Biyehudah* included the following: The woman who had had an adulterous relationship was halachically forbidden to her husband. Was the young man required to tell the husband, so as to fulfill the Talmudic directive לאפרושי מאיסורא, to draw him away from sin? And if he did tell the husband, but the husband nevertheless continued to stay married to his wife, should he tell the Beth Din of the city, so that the court could force him to desist from the forbidden relationship?[2] The elaborate and extensive responsum of Rav Landau is a marvel of halachic sensitivity and brilliance.

First of all, the *Noda Biyehudah* examined the concept of *kavod habriot*, respect for human beings.[3] How would publication of such scandalous behavior affect the innocent members of that

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him or her to be faced with such conflict in a special way.

Although one must hesitate to discuss publicly delicate matters of this sort for fear that some persons may mistakenly, or even deliberately, find herein some unwarranted *heter* for unconscionable actions, I rely on the decision of the sainted *Chafetz Chaim* in publishing his classic *Shmirat HaLashon*. Despite his trepidation, he decided to set down in detail the laws of *lashon hora* and talebearing so that those honestly seeking the truth could follow his guidelines. In this, he followed the precedent of Rabbi Yochanan ben Zakkai (*Baba Bathra 89b*), who publicly denounced the financial chicanery of some Jewish merchants, albeit afraid that through his public denouncement, some heretofore honest persons might learn ways to cheat. However, the talmud concludes that he decided to speak out anyway, for צדיקים ילכו בם ד׳ ישרים דרכי ורשעים יכשלו בם "the ways of G-d are straight the righteous will walk in them, the sinners will stumble on them."

2. אוי״ח ל״ה The problem of the young man's own need to repent was also discussed at length by the *Noda Biyehudah*, but that issue need not concern us here.

3. ברכות כ.

family? Must they suffer shame in order to prevent the husband from a sinful relationship? In his conclusion, Rav Landau advised the man that he had to tell the husband, but that it was not necessary for the Beth Din to be informed. "אם כן פשוט הדבר שחייב להגיד. It is clear that he must tell."

The ruling was not met with unanimous acceptance. His decision was strongly contested by *Divrei Chaim* (*Or Hachaim* 35)

> סוף דבר והיוצא מכ"ז דלפע"ד אין על הבועל חיוב להודיע להבעל מפני כבוד הבריות. ואם לומר להאשה שהיא אסורה עדיין אני מסופק . . . . וכן נוהגין כמה גדולי הדור שבאו לפניהם החוטאים בדברין כאלו.
>
> In conclusion according to my humble opinion, the upshot of this is that the man has no obligation at all to tell the husband because of respect for people. And I am still in doubt whether he should even tell the woman that she is forbidden to her husband. And this is the way several rabbinic greats of our generation have ruled when sinners come to them with this sort of thing.

The quandry in which the young man found himself is one which poses a problem peculiar to many person whose professional activities involve them in other peoples' private lives. Doctors, lawyers, psychologists, family counselors, and others often are privy to information the revelation of which could have a disastrous effect on their clients' lives but which might be essential for others to know. The professional receiver of private information is placed in a difficult conflict of interest between his legal or professional requirement to remain silent and his possible religious obligation *not* to remain silent.

Sometimes the problem arises in the reverse: One time, about a week before Pesach, a woman called me for a *psak halacha*. Her doctor had prescribed a certain pill, and she needed to know if she could take it on Pesach. Having gotten the name of the pill, I contacted a pharmacist to determine the ingredients, to know if there were *chametz* in it. To my chagrin, he told me that the pill was a placebo—there was nothing in it at all that could effect a cure. Apparently without her knowledge, she was being used in some

medical experiment to determine the efficacy of a new drug, and she was in the control group. Now, besides the problem of whether the pill was *chametz*, *I* had the problem of whether to tell her that she wasn't really getting any medication at all for her ailment. Was I obligated to let her know so that she could turn elsewhere for help with her illness? Or should I keep silent so that medical science could experiment (possibly to her detriment) in the hope of developing new drugs (for the benefit of society)?

The problem is not unique to clergymen. For centuries, doctors have taken the Hippocratic Oath before embarking on their healing careers:

> Whatever in connection with my professional practice or not in connection with it I may see or hear in the lives of men which ought not to be spoken abroad I will not divulge as reckoning that all such should be kept secret.

In the legal profession, too, there are strict canons of ethics prohibiting lawyers from disclosing even fraudulent activities by their clients. Despite much internal debate and opposition, the American Bar Association, in February and again in August, 1983, adopted a code which would require lawyers to keep their clients' secrets even when the clients commit large financial frauds or other white collar crimes.[4] Obviously, this amendment is going to pose a

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4. The New York Times, August 2, 1983.
In the interval between February, when the ABA Committee passed the resolution, and August, when the general convention of the ABA formally adopted the amendment as part of its revised ethical code, I contacted the ABA for clarification of the issue. In response, I received a letter which confirmed that "in Formal Opinion 341 the Committee concluded that under the Model Code of Professional Responsibility a lawyer may not reveal any information that is protected as a client confidence or secret, even if necessary to prevent a fraud." My correspondent had the grace to feel uncomfortable about penning such crass "ethics" for a "Model Code", and added,

"I should emphasize two facts. First, the Model Code is advisory only and is binding only to the extent in has been adopted by the lawyer's licensed jurisdiction (editor: in August, it was adopted nationally). Second, the American Bar Association continually reexamines the ethical standards governing a lawyer's professional conduct and may amend these provisions from time to time."

great dilemma for an observant Jewish attorney who, for example, would be legally precluded from warning a friend not to buy a share in his client's business, when there is a specific mitzva in the Torah — *lo ta'amod al dam reyacho*— one must try to prevent harm from coming upon another Jew.[5]

Nor are law and medicine the only fields which harbor potential problems. There are myriad situations where a person's professional obligations can clash with his religious beliefs. A chemist, for instance, may find out that his company is secretly dumping toxic wastes into a stream which pollutes a nearby residential water supply. Can he let a friend buy a house in that development without warning him? But if he lets the word out, his company might fire him or might be put out of business! How does one make a decision like that? What guidelines does the halacha offer? Is there any difference halachically between an individual acting privately and a person whose profession necessitates his receiving information which must remain private?

Professional Confidences

In this paper we will explore the ethical and religious directives to which a committed Jew can turn when confronted by a conflict between the obligations of his profession and the requirements of his religious teachings. When a doctor ponders whether to inform parents that their child is taking drugs, he perceives a moral dilemma; but for the observant Jew, the wrong move could mean violation of seventeen different negative commandments and neglect of many positive mitzvot.[6] Among other things, he must be concerned, as noted previously, not to let any harm, whether physical, financial, or other, come to another Jew if he can prevent it.[7] He, too, must consider speaking *lashon hora* as a sin; telling a secret may be a violation of *lo tailaich rachil.*

At the outset, it is necessary to clarify why there need be any

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5. See מנחת חינוך רל״ז, אות ד׳ who maintains that this לאו applies to ממון.
6. See *Shmirat HaLashon.*
7. ספר חסידים, סי׳ קצא discusses whether it is necessary to speak respectfully about a person who is a bad influence on others.

discussion at all — why should a person's profession exempt him from the laws which govern every Jew's behavior? What is the rationale for bending any of the rules?

Basically, there are two major reasons which might militate for exempting a person whose profession requires keeping secrets from the strictures which ordinarily apply. First of all, how will his telling affect the community as a whole, not just the individual informed or spoken about? If a school psychologist calls up parents to tell them their child is taking drugs, it might be very helpful for the youngster involved. However, it might effectively stop other students from confiding in that psychologist and thereby prevent their being helped at all. Furthermore, if psychologists could not be trusted to maintain silence, people in general would stop using them. So the question really is, do psychologists benefit society as a whole? Will divulging secrets endanger the practice of that profession? What would be the net result to *society* if troubled persons no longer had someone to help them cope with personal problems? The question goes far beyond the individual situation; one has to take into account the full scope of the problem, which actually is what effect will the betrayal of a professional confidence have on the community.

The second point to ponder is the cost to the individual involved.* If an accountant calls up his friends and tells them not to invest in the business of Mr. X, his client, because the business will soon go bankrupt, we can praise him for being a good friend; but very few people will want to use him as an accountant. In keeping the mitzva of preventing harm from coming to a fellow Jew, he can cause great harm to himself, by losing clients or being fired from his job. Should that have any bearing on the halacha as far as he is concerned? Is a person obligated to cause financial (or other) damage to himself in order to protect others?

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*For the halachic guidelines as to how great a financial loss a person is obligated to incur in the performance of a mitzva or to avoid a transgression, see *Journal of Halacha and Contemporary Society*, Volume I, pp 83-4.

Whose Welfare?

"Do not place a stumbling block before a blind man."[8] Obviously, this biblical command is not limited to its literal meaning — the Torah hereby teaches us that it is forbidden to give someone misleading advice. But what if the advice which would be best for that individual might not be in the best interests of the community as a whole? I remember a case where a young man from a wealthy family asked his Rosh Yeshiva's advice: Should he continue to spend his days in the yeshiva, or should he join his father's lucrative business, for the father was planning to retire? What should his Rosh Yeshiva have told him? For the young man himself, spending a few more years in the yeshiva learning Torah would certainly be the best path for his own personal growth. However, if he were to take over the father's excellent business, he would be in a position to render enormous service to the yeshiva, enabling scores of men, some much more gifted intellectually than he, to learn intensively. Should the Rabbi have considered the best interest of the person before him or the best interest of the larger group? In that particular situation, the Rosh Yeshiva decided that it would be better for *klal Yisrael* to have a wealthy supporter of the yeshiva rather than for the young man to enrich only his own life. But it is not an easy matter to decide such things.

In a real-life case which must certainly win some kind of award for callous infamy, a medical experiment was undertaken in rural Alabama in the 1930's, in which a group of black men who had syphilis were not given any treatment and were not even told of their diagnosis.[9] This was done so that researchers could study the "natural history" of the disease. Perhaps today there is no such blatant instance of disregard for human welfare, but surely medical researchers do know at times that the "treatment" they are offering is worthless or, conversely, that better treatments are available — but if they tell, they will spoil the experiment, or lose the government grant to do further research. Moreover, a researcher

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8. Leviticus 19:14
9. The New York Times Magazine, June 5, 1983

will almost certainly lose his job if he fails to maintain the standards required by scientific experimentation.

In Gittin 45a the Gemara postulates אין פודין את השבוים יותר מעל דמיהם "We do not ransom captives for more than they are worth." In olden times, it was not unusual for pirates or highwaymen to capture innocent people and demand their ransom from the community; as a protective measure, the Rabbis ruled that "excessive" ransom could not be paid. Clearly, this was a provision enacted for the protection of the community — if pirates became aware of the Jews' willingness to pay any amount for ransom of their brethern, they would constantly kidnap Jews.[10] Therefore this amendment was made to keep the entire Jewish population from such inordinate danger.[11] Even if a few captives might suffer, it was a ruling that had to be followed in order to provide some measure of security for the Jewish community.[12]

There are times when individual rights must be forfeited for the greater benefit of the community.[13] That is the rationale

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10. For this reason, Rabbi Meir of Rothenberg would not allow the Jewish community of Germany to ransom him when he was held hostage in 1293, despite their anxious desire to do so.
11. Transposed to the realities of our own times, this may be seen as the rationale underlying the Israeli Government's adament refusal to negotiate with terrorists. As heartbreaking as it is to allow some to be sacrificed, everyone understands that were the Israelis ever to start negotiating with one group of terrorists holding hostages, it would initiate a wave of terrorism which might ensue in carnage more dreadful than anything we have seen so far.
12. פתחי תשובה רנ"ב, אות ו' rules in a similar situation that it is forbidden to rescue some of the hostages being held for fear of reprisals against the remaining ones. However, if one of the captives sees a chance to escape, he may seize it, even if he knows the captors will punish the other hostages when they discover his escape. Also, Tosafot גיטין מה. rules that an individual may personally pay whatever amount is demanded for his own ransom or for his wife. In other words, a Rabbi rendering a decision for the community must act in the best interests of the community, but the individual may act for his own best welfare. See also יורה דעה רנב.
13. The well-known exception to this rule: If a city is besieged by the enemy and they stipulate, "Give us one person and we will kill him and let all of you go free. And if not, we will kill all of you," the halacha is that all of them must die and they may not turn over an innocent person for killing, even if that would save the entire community. See Rambam הל' יסודי התורה, פרק ה' based on Yerushalmi תרומות, פרק ח'

underlying the ruling that captives may not be ransomed at excessive cost to the community. However, it is important to realize always that the operative factor is the *principle* of community preservation, not the ruling itself. In another text in *Gittin*,[14] there is related the encounter of Rabbi Yehoshua with a yong Jew being held captive by the Romans. Standing outside the window of the cell, Rabbi Yehoshua engaged him in conversation. He was deeply impressed not only by the boy's physical beauty, but also by his keen intelligence. After much effort and tremendous expenditures, he sucessfully ransomed the youth and brought him back to Eretz Yisrael. Subsequently, that child grew up to become the outstanding scholar, Rabbi Yishmael. Tosafot immediately seizes upon the glaring contradiction between the Rabbi's action and the Talmudic dictum that captives may not be redeemed at excessive ransom. However, reasons Tosafot, Rabbi Yehoshua must have recognized that this youth possessed exceptional qualities לפי שהיה מופלג בחכמה. We may take Tosafot as positing that although the ransom was excessive, yet ultimately it was worth it for the welfare of the community. This potential sage and leader, Rabbi Yishmael, would be able to bring even more good to the Jewish community than might be lost by paying so high a ransom for him. The benefits which would accrue to the people by having such a sage in their midst outweighed the evil which might devolve from whetting the appetite of would-be kidnappers.[15]

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14. *Gittin* .נח

15. Tosafot offers an alternative reason for Rabbi Yehoshua's disregarding the rule: the boy was in danger of being killed, and had to be saved at all cost. The rabbinic ruling was never meant to apply when the captive was in danger of losing his life. The same philosophy, that the preservation of life is a desideratum which takes precedence over virtually all other rules, is further evidenced in Rambam פרק ד' מהלכות רוצח, הלכה ח' וט'..

> Someone who murdered a person but the two witnesses did not see him (do it) simultaneously...or two witnesses saw him do it but did not warn him (that he would be put to death for his crime)...all these type of murderers (who cannot technically be executed by the court) should be put into a *kipah* (cell) and fed very little and be given only little water until their insides shrivel, and then be given heavy foods which will cause their death.
>
> But this is not to be done to other persons who are liable to the

American jurisprudence may not have arrived at the same conclusion as has Judaism in working out the conflict between competing rights.[15a] The classic example is the Tarasoff case. In California in 1969, a man named Poddar killed Tatiana Tarasoff. Her parents subsequently sued a Dr. Moore, the psychologist who had examined Poddar prior to the murder, and to whom Poddar confessed his intention to kill the girl. Although he did inform the police (who held Poddar only briefly), he failed to inform either the girl or her parents. Indeed the Court did find the psychologist liable for his negligence. However, I believe that the dissenting view of the minority in this case is more consonant with the authentic Jewish viewpoint on the subject. This is how Judge Clark of the California Supreme Court explained his dissent:[16]

Deterrence From Treatment

First, without substantial assurance of confidentiality, those requiring treatment will be deterred from seeking

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death penalty (but cannot be executed due to a technicality) but only to murderers...for although there are worse sins than murder they nevertheless do not cause the destruction of civilized society as does murder. Even idolatry or sexual immorality...are not as bad as murder because these are sins between man and G-d but murder is a transgression between man and his fellow man...

If we accept the thesis of Rambam that salvaging life has the highest priority, then we would have to posit that the rules governing professional conduct have to reflect that priority. Were a patient to confess to his psychiatrist that he harbors a secret urge to kill someone, how could one justify his not taking steps to prevent that dreadful calamity? Could one make a reasonable argument that if the psychiatrist were to divulge his secret, other persons in need of counseling would be afraid to seek help and ultimately *more* murders would occur because psychiatrists would not be able to help people? It is an argument that begs for a resolution.

15a. But the American Medical Association, Canon of Ethics, 1982, rule 702, reads as follows:

> The record is a confidential document involving the physician-patient relationship and should not be communicated to a third party without the patient's prior written consent, unless it is required by law or is necessary to protect the welfare of the individual or the community.

There is thus some abiguity when the welfare of the individual does not coincide with the welfare of the community.

16. Tarasoff v. Regents of U. of Calif. 551 P. 2d 334

> assistance . . . . It remains an unfortunate fact in our society that people seeking psychiatric guidance tend to become stigmatized. Apprehension of such stigma—apparently increased by the propensity of people considering treatment to see themselves in the worst possible light—creates a well-recognized reluctance to seek aid. This reluctance is alleviated by the psychiatrist's assurance of confidentiality.
>
> **Full Disclosure**
> Second, the guarantee of confidentiality is essential in eliciting the full disclosure necessary for effective treatment . . . .

From another case which appears, on the surface, to be quite different in nature, we may derive the same principle about the need to sacrifice the individual for the welfare of the community. About one hundred years ago, the *Maharam Schick* was asked by Rabbi Zalman Spitzer of Vienna for his advice. Rabbi Spitzer, who was the spiritual leader of the Jewish community in Vienna, had been asked by the *kehillah* in Mattersdorf to serve as their Rabbi. He wanted to know if it was permissible for him to leave his post in Vienna in order to undertake the position, where he would have far more opportunity to learn Torah. In his most enlightening responsum,[17] *Maharam Schick* concedes readily that the new pulpit offers a more desirable lifestyle for Rabbi Spitzer personally. "There you will be able to disseminate Torah, and your heart desires to learn and to teach Torah; undoubtedly, you are right on this point." Nevertheless, *Maharam Schick* instructs his respondent not to accept the new position because it is more important for the Jewish people that he continue his effective campaign to spread Torah values in the city of Vienna.[18] Moreover, he compares it to a general's leaving the scene of battle in the middle of a war – he will dishearten all the others too. Your leaving Vienna, he tells the

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17. שו"ת מהר"ם שי"ק רכ"ז
18. On this point, about a Rabbi's leaving his pulpit, see חות דעת חלק שני, תשובה ט' הערה דף מ"ו.

Rabbi, might cause others to abandon the battle for Torah there; therefore you must stay.

The few examples we have cited are representative of the entire thrust of Jewish thinking and reinforce the conclusion that in Jewish ethics the welfare of the community takes precedence over the needs of the individual. Now the problem becomes, how to apply this principle to the realities of life.

There cannot be a hard-and-fast rule that a psychologist should always tell the parents or a family counselor should never tell the husband. The professional, faced with a conflict between the ethics and demands of his profession and the rights of the individual he is treating or the rights of the community, has to seek rabbinic guidance to determine how to proceed in each situation. It may be that maintaining professional secrecy is so absolutely integral to the proper function of that profession and the profession so essential to the welfare of society that the halacha would decide the practitioner must maintain his professional secrets. Or the halacha may be that it is more important for him to reveal the confidential material, even if it will cause him enormous personal damage.

Clearly this is not a question which a person should decide for himself, and the professional practitioner must consult with a competent halachic authority.[19] There is no way a person can overcome his own subjective motivations in deciding so sensitive

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19. See פרק ב׳ דנגעים, משנה ה׳
יורה דעה שי״ב ס׳ ב״, חולין מד:, יבמות כה:
also refer to עירובין סג., רמ״א יורה דעה י״ח ס׳ יח
ר״ש על משנה דנגעים, תוספות נדה כ: ד״ה כל יומא
בכורות כח:, ערוך השלחן יו״ד קפ״ח כ״ב, וי״ח מ״ח
These citations indicate that it is quite difficult to define the exact extent and implication of this halacha. What does appear to be evident however is the necessity for each person, realizing the limitations imposed by his own subjectivity, to seek the guidance of an objective outsider who is competent to render halachic decisions on matters as serious as these.
The priciple is succinctly expressed by the *Mishnah Brurah* תקי״ו אות א׳:
The principle is that in any matter dealing with money, a person should not render his own decision, for the "evil inclination" (*yetzer hora*) can find many excuses.

and crucial a question. Sometimes the needs of society will be best served by maintaining the standards of a given profession, but sometimes that may not be the case.

Administrators and Menahilim

Doctors, lawyers, and psychologists face the dilemma of choosing between the rights of the individual and the rights of society, but they are not alone in having such conflicts. One of the most vexing situations with which teachers and principals have to cope is the decision to expel a child from a yeshiva. Administrators need to know on what grounds a yeshiva can deny a Jewish child the right to be taught Torah. A variety of causes could prompt a Hebrew school to seek such an option — perhaps poor academic performance, possibly laxity in *minyan* attendance or observing mitzvot, or maybe the student is instigating others to rebel against Torah discipline.[20]

In responsa which he has penned to various yeshiva principals who inquired about expelling students, Rav Moshe Feinstein appears to accept as his criterion the effect which the recalcitrant student has on fellow students. Although each Jewish child is indeed entitled to receive a Torah education, his rights do not supersede the right of a community to maintain a yeshiva in accordance with Torah standards, and if his continued presence makes this difficult or impossible the child may be denied the right to attend. In one case, Rav Feinstein concludes:[21]

> אבל אם התלמיד מקלקל את האחרים ודאי צריך לסלקו אבל צריך לדון זה בכובד ראש ובעיון רב כי הוא כדיני נפשות
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> ... but if the student has a bad influence on others, certainly it is necessary to send him away. However, this judgment has to be made with great seriousness and much thought, because it is akin to a decision of life and death. . .

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20. See *Shulchan Aruch HaRav* הלכות ת״ת פרק ד׳ for a discussion of how it is even permissible to accept a תלמוד שאינו הגון to a yeshiva, since the Gemara in חולין קלג. says one should not learn with such a student.
21. אגרות משה, יו״ד חלק ג׳ ע״א

In another instance, the mother of a student refused to send him to yeshiva wearing *tzitzit*, and the administrators wanted to know if this were sufficient reason for not accepting him. Here, Rav Moshe responds[22]

> ולכן אין לקבל תלמיד כזה בהישיבה ואף שידוע שלא תשכור עבורו מי שילמוד עמו בעצמו ויהיה ילד זה לבטלה והפקר מ"מ הפסד תלמידים אחרים והפסד הישיבה בכלל עדיף.
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> Therefore a child like this is not to be accepted in a yeshiva. And even though it is known that the mother will not engage a private tutor to learn with him, and this child will receive no Jewish education, nevertheless, the negative impact (he would have) on the other children and on the yeshiva in general takes precedence...

Centuries ago, the author of *Sefer Chasidim* wrote very sharply to his disciples about the same type of situation that we still face today. A young Jewish man had run away and joined a band of Christians. His family was collecting money in order to try and persuade him, through promises of financial gain, to return to the Jewish fold. Whereupon R. Yehudah HeChasid wrote definitively:[23]

> אמר להם החכם חדלו לכם פן תתחרטו כי יעשה ביותר רע מוטב שתעזבוהו בין הנכרים ולא יחטיא אחרים
>
> Stop (this undertaking) lest you will have regrets, because (if he returns) he will cause even more harm. It is better to leave him among the heathens and let him not influence others to sin.

A similar approach is seen in R. Yehudah HeChasid's advice to parents and communal leaders: [24]

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22. אגרות משה שם. The same adamance about barring from the yeshiva a child whose presence harms others or affects the yeshiva in a negative way is evident in other responsa as well. See אגרות משה ע"ז אות ג, אגרות משה יו"ד ח"ג ס' ע"ה
23. ספר החסידים קפ"ח
24. ספר החסידים קפ"ט

> מוטב לגרש את האחד לתקנת אחרים הטובים שנאמר גרש לץ ויצא מדון. ואם יש לאדם בנים ואחד בעל מחלוקת או שירא פן יחטיא אחיו מוטב שידחה את הרשע בשתי ידים.
>
> It is better to throw out the one (bad one) in order to improve the others who are good, as the verse says, "Expel a scoffer and strife exits."
> And if a person has several sons and one of them is argumentative or the father fears that he will cause his brothers to sin, let him better send away the wicked one with both hands. [25]

This brief survey concerning the conflict between the rights of the individual and the welfare of the group, as it pertains to education, evidences once again the philosophy of Judaism that the rights of the group take priority. But those involved must remember, as Rav Feinstein cautions, that it is a matter of major gravity, for the decision to expel a student is akin to a life-and-death decision for the individual involved.

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25. It is fascinating to note in all the halachic directives here a total lack of any Talmudic or biblical source citation. Perhaps the conclusion was so self-evident to these scholars that they did not consider it necessary to cite chapter and verse to support their view. At any rate, later scholars have tried to find a precedent to justify expelling disruptive students from a yeshiva; some have suggested a text in *Horiot* 7b as appropriate precedent for such a step. There, the Gemara tells of a dispute between the *Nasi* (Head of the Academy) and Rabbi Meir and Rabbi Nachman. Due to their scheming against the *Nasi*, the two Rabbis were expelled from the Beth Midrash. However, we cannot accept this incident as a precedent because later in the Talmudic text it is clear that by the next day, Rabbi Meir and Rabbi Nachman were back in the Beth Midrash, and another punishment was substituted for the expulsion. Had they been considered a bad influence, their banishment would not have been rescinded so readily. Thus, we cannot draw parallels or derive solutions for our own question, which is if a recalcitrant student must be tolerated or whether the welfare of the other students is more important.

Torah Education Today

Rabbi Joseph Stern

"*Ve Talmud Torah Ke-neged Kulam*" the study of Torah is equal to all the other mitzvot. Understandably, Torah education has always been the paramount concern of all Jewish communities, from biblical times until the present. Educating the youth for Torah in a milieu whose values are antithetical to Torah precepts is a task which challenges Jewish leaders in our day. The following essay presents an overview of major responsa regarding philosophy and technique of Jewish education with emphasis on the unique problems of the Day School movement. The dean of American *Poskim*, Rav Moshe Feinstein שליט"א is perhaps the most prolific modern respondent on matters of Torah Education and will be cited extensively.

Each subsection will be devoted to a major contemporary concern of American educators (מחנכים), both professional and lay people, in their role as parents and yeshiva activists.

Site Location and Co-education Issues

Perhaps the most pressing practical concern of yeshivas is financial. Day Schools in dire straits have sought economize by consolidating boys' and girls' classes or to acheive equivalent savings by constructing one central campus where boys and girls would learn in close proximity.

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Rav Moshe Feinstein[1] strongly opposes both trends, arguing that in addition to the considerable halachic problems posed, contemporary society's moral climate would dictate against co-education. Under emergency circumstances (if the only alternative to co-ed program is the local public school), Rav Feinstein reluctantly tolerates mixed classes, invoking the classic dictum עת לעשות לה' הפרו תורתיך, in an emergency situtation, one may even disregard part of the Torah in order to salvage the remainder. Even then, junior high school students (grade 7 and above) must be separated by sex. In a similar ruling Rav Ovadia Yosef [2], in his responsa entitled יחוה דעת based on his weekly Israeli radio lectures, strenuously opposes co-ed education. His position is even more strict than that of Rav Moshe Feinstein, permitting only first and second grades to be "mixed", even if there is great strong financial need.

However, the situtation in Israel is not entirely analogous to that of Diaspora Jewish education. Often struggling Day Schools unable to maintain their own building utilitze rented quarters. Rav Moshe Feinstein[3] insists that Yeshiva Day Schools not share facilities with non-Orthodox places of worship, in order that one not receive the impression that they are legitimate synagogues. In a related responsum, the Rogatchover Gaon [4] rules that no synagogue may obtain revenue by renting its facilities on weekdays to Bundist youth groups, known for their animosity to Torah values as well as for their lax moral standards. He argues that it would be far preferable to close the Shul, rather than perpetrate such a halachic absurdity, even if the members would than have to *daven* according to a different נוסח (ritual) in another Shul. Thus, Yeshiva facilities should not be used by organizations whose philosophy is inimical to Torah and mitzvot. However, Rav Feinstein [5] concedes that Yeshiva property need not be designated for sacred purposes only.

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1. אג"מ יו"ד ח"ג סימן ע"ח ח"ב סימן ק"ב וק"ד
2. שו"ת יחוה דעת ח"ד סימן מ"ו
3. יו"ד ח"ב סימן ק"א ויו"ד ח"ג סימן ע"ז
4. שו"ת צפנת פענח ח"ב סימן ט"ז
5. שו"ת אג"מ יו"ד ח"ג סימן פ"ג

The same building may be utilized for Hebrew and secular studies.

Personnel Policy and Labor-Management Relations in the Day School System:

Perhaps the most pervasive personnel-related issue in contemporary responsa is the issue of teacher strikes. The secular world has witnessed increasing vandalism by trade unions, and even white-collar workers and civil servants, who had prided themselves on their quasi-managerial role, have been involved in some costly and prolonged strikes. Even teachers within the Yeshiva movement who by everyone's admission often grossly are underpaid and considerably overworked, have been caught up in the same movement, the same sense of militance. Rav Feinstein[6] in a responsum addressed to Rav Elias, then *Menahel* (administrator) of Yeshiva Bais Yehuda, Detroit, Michigan, strongly opposes work stoppages by Day School personnel. He argues that unionism, although essentially a salutary development from a halachic viewpoint (if violence is not resorted to), may not generate ביטול תורה. After all, he reasons, a teacher is essentially compensated not for his teaching acumen (Torah teaching, especially of Oral Law and traditions, must be done gratis)[7] but rather for time expended in teaching rather than in pursuing another career (שכר בטלה). If so, Yeshiva teachers idled by a strike are by no means relieved of their obligation to teach. Nonetheless, in another responsum Rav Feinstein[8] agrees that certain dire circumstances (extenuating financial exigencies) may justify a strike. But merely missing a check or two or being consistently paid late are not sufficient grounds for a job action.

Despite Rav Feinstein's opposition to teacher strikes, he urges that teachers not be dismissed for participation in a strike. Rav Ovadia Yosef[9] similarly opposes any teacher strikes and strongly advises against collusion with participants in such job actions. No

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6. שם סימן ע״ד וביו״ד ח״א סימן קל״ח
7. בכורות כט. יו״ד סימן רמ״ה סעיף ו׳
8. שו״ת אג״מ יו״ד ח״ג סימן ע״ד ובחו״מ סימן כ״ט
9. שו״ת יחוה דעת ח״ד סימן מ״ח

personal grievance can condone mass ביטול תורה.

A most nettlesome issue in labor-management relations, especially in academe, has been the question of tenure. Is tenure attained by dint of rare, distinguished accomplishment (such as publications) or merely on the basis of time served? Rav Moshe Feinstein[10] in a responsum addressed to Rav Teitz of Elizabeth, argues that every job confers automatic tenure upon its occupant. Even provisions to the the contrary, implying that employees' contracts must be renewed annually, are of dubious halachic validity. Rav Moshe Feinstein suggests further that even if cause for dismissal exists, some severance pay should be granted.

Recently, yeshivas as well as secular institutions have been affected by the national trend of declining birth rate. A smaller enrollment usually necessitates faculty reductions (unless attrition itself can correct any imbalances). Non-unionized institutions generally abide by seniority provisions in determining layoffs — last in, first out. Rav Moshe Feinstein[11] questions the halachic validity of a seniority tenure system, noting that according to most *Rishonim*, workers do not enjoy vested rights to their *positions* but are merely entitled to receive due *compensation*. He urges that wherever possible, no one be laid off! Rather, the remaining workload should be redistributed on an equitable basis. However, Rav Moshe Feinstein concedes the acceptability of specific union contracts citing seniority as the basis for determining layoffs. (Parenthetically it should be noted, Rav Moshe Feinstein[12] is supportive of unions, arguing that the Talmud sanctions their existence providing they receive majority certification:

רשאין בני העיר להסיע על קיצתן[13]

He even leans towards approval of punitive action against strike breakers[14] especially if the union acts as the bargaining agent of all workers, even non-members, arguing that non-union

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10. שו״ת אג״מ ח״מ סימן ע״ו, ושם סימן ע״ז
11. שם סימן ע״ט ושם סימן ע״ה וסימן ע״ח וסימן פ״א
12. שם סימן נ״ח
13. בבא בתרא דף ח׳.
14. אג״מ ח״מ סימן כ״ט

employees are sabotaging the union's effectiveness, קא פסקת לחיותאי[15] and depriving them of their just livelihood.)

Yeshiva teachers must reflect the life style as well as the aspirations of the Torah community. Rav Moshe Feinstein[16] writes that individuals teaching in non-Orthodox Talmud Torahs (a practice not necessarily contrary to halacha) should nevertheless not be accepted as yeshiva faculty members. Similarly, all yeshiva teachers must respect Orthodox tradition regarding attire and other matters of behavior.[17]

Admission Criteria:

Secular educational institutions have traditionally catered to different market segments, some priding themselves on their exclusivity, other being open to all applicants. The Sages of the Talmud already disputed the merits of an open-door policy. Contemporary Jewish Day Schools generally accept all applicants, even those incapable of paying full tuition, a policy implicitly encouraged by Torah leadership. Rav Moshe Feinstein[18] urges Day School administrators to welcome everyone, even weaker students. However, those who refuse to observe mitzvot (at least while on school premises) as well as those who pose severe discipline problems may be dismissed. Not infrequently, parents of prospective students instruct Yeshiva Deans, "Learn with my child but don't impart any of your religiosity to him". Rav Moshe Feinstein urges admission of such children, trusting that the Yeshiva's ambience will prove conducive to enhanced Torah observance.

The Rogatchover Gaon[19], faced with the unusual question of expelling current students in favor of accepting those with greater potential, differentiated between parental obligation to teach Torah and the Jewish community's collective responsibility. *Parents* may

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15. ב"ב כא:
16. שו"ת אג"מ יו"ד ח"ב סימן ק"ו וק"ז וח"א סימן קל"ט
17. שם ח"ג סימן ע"ג (בסופו)
18. שם סימן ע"א
19. שו"ת צפנת פענח ח"ב סימן י"ז

operate on the merit principle (investing more efforts and funds for children with greater potential), but the *community* may not make such distinctions. In the Talmud, there is extensive praise for Yehoshua ben Gamla, who instituted the principle of universal Jewish education, and his precedent is the halachic norm.

One absolute requirement for admission cited by both *Iggerot Moshe* and *Minchat Yitzchok*[20] is that children admitted to Day Schools must meet halachic criteria of their very Jewishness. Under no circumstances may Gentile offspring of a mixed marriage be admitted to a yeshiva. Similarly, great caution must be exercised in verifying any claim of conversion (גרות) by parents of prospective yeshiva students, for conversion performed in disregard of halachic principles (e.g. without sincere acceptance of mitzvot, or done by a Beth Din of non-observant Jews) is tantamount to no conversion.

Educational Methodology

In some states, textbook selection is a rather elaborate process. Not infrequently, publisher's representatives apply considerable pressure to statewide committees to effect utilization of their text. Rav Moshe Feinstein[21] as well as *Chazon Ish*[22] insist that textbooks used for religious studies be authored by G-d fearing people. If at all possible, secular textbooks posing ideological problems should not be utilized either. If no substitutes are readily available, offensive material should be expurgated. Often the best textbooks are primary sources, the sacred literature itself. In a responsum written more than half a century ago, Rav Yosef Rosen[23] (Rogatchover Gaon) opposed abridged editions of the Torah.

Torah law invests *melmadim* (educators) with considerable authority, some of it punitive in nature, trusting that such enforcement powers will be used with restraint. Rav Moshe Feinstein[24] urges that corporal punishment (even assuming secular

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20. שו״ת מנחת יצחק ח״ג סימן צ״ח
21. שו״ת אג״מ יו״ד חלק ב׳ סימן ק״ה וחלק ג׳ סימן ע״ג
22. אגרות חזו״א
23. שו״ת צפנת פענח (ניו יורק תשי״ב) חלק א׳ סימן ס׳
24. אג״מ יו״ד ח״ב סימן ק״ג

authorities permit it) be utilized sparingly. The pedagogue must be convinced of the offender's guilt prior to resorting to negative reinforcement. Despite societal approval of whistleblowing[25], Rav Moshe Feinstein is opposed to teachers' encouraging students to inform on one another (e.g. about undesirable classroom conduct, poor exam procedure, etc.). Summing up his philosophy in a letter to teaching professionals, [26] Rav Moshe Feinstein urges educators to make a personal impact on their students, not merely to impart knowledge. The essence of Torah education lies in transmitting skills and moral views necessary to live and act as a Jew.

Scheduling Considerations

Even such seemingly mundane issue as devising a daily program and yearly schedule are effected by halachic criteria. Rav Moshe Feinstein[27] opposes the trend towards eliminating Sunday classes, and urges that yeshivas adhere to a six-day-week schedule. Similarly, it is inadvisable for winter vacation to coincide with traditional year-end breaks given by secular schools.

The daily educational program should also reflect Torah values, Torah studies being conducted in the morning when the students are most receptive, and secular subjects can be relegated to the afternoon[28]. However, under certain extenuating circumstances, Rav Moshe Feinstein permits women's divisions of yeshivas to reverse the traditional format and offer secular subjects for girls in the morning hours.

Curriculum

Of necessity, curricula must be modified to suit institutional needs as well as the students' capabilities; even gender plays a role in determining curricular content. Rav Feinstein upholds the traditional viewpoint[29] maintaining that Torah *Shebe'al Peh* (Oral

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25. שם
26. יו"ד ח"ג סימן ע"א
27. אג"מ יו"ד ח"ג סימן פ"ד
28. שם סימן פ"ג
29. עיין סוטה כא: כל המלמד את בתו תורה כאלו מלמדה תיפלות וברמב"ם פ"א הלכות ת"ת הלכה י"ג

Law) should be taught to men only, while women and girls be instructed in *Chumash, Tanach,* empirical halacha (*Dinim*) and related areas. In a responsum[30] addressed to Rav Eliyohu Tzvei of Philadelphia Yeshiva, he rules that Mishna (with the exception of essentially homiletic components, such as *Pirkei Avot*) is included under the rubric of Oral Law and should not be taught to women. However Rabbi J.B. Soloveitchek שליט"א personally gave a lecture in Talmud to women students of Stern College.

Rav Henkin זצ"ל [31], in his renowned tribute to Rabbi Israel Rosenberg of Ezras Torah expresses his views on various concerns. Arguing that it would be educationally most effective to instruct children in their own vernacular, he opposes teaching Jewish studies in *Ivrit* (i.e. translating sacred literature — *Chumash* — into modern Hebrew). He[32] also urges a cumulative approach to Torah learning, suggesting that material taught in elementary school should be reinforced at upper levels. Nor is he willing to accept the reality that in many yeshivas *Chumash* , Hebrew grammar, and the Prophets are taught primarily to little children and then phased out prematurely. On the contrary, such subjects should be taught at various levels of sophistication ranging from preschool to *Beth Hamedresh*. He also advocates formal Hebrew grammar instruction, suggesting that knowledge of the fundamentals of language is essential for all aspect of Torah studies[33] (especially Rashi's commentary on *Chumash*).

Curricular issues are crucial not only for elementary school pedagogues but also for adult education specialists. Often, decisions of omission (what not to learn) are as crucial as matters of commission (what to include in the curriculum). For example, Rav Ovadia Yosef[34] strongly opposes a neo-kabbalistic movement quite popular in Israel, urging that the study of kabbala (mysticism) be limited to a select few advanced students, studying from competent G-d-fearing teachers.

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30. אג"מ יו"ד ס"ג סימן פ"ז
31. עדות לישראל עמוד 157 (דף קכב בדפוסים החדשים)
32. שם עמוד 154 (דף קכ:)
33. שם עמוד 156 (דף קכא:)
34. שו"ת יחוה דעת ח"ד סימן מ"ז

Attitudes

A major concern of Jewish education today is the issue of harmonizing society's demand for secular studies with the Torah's requirement of והגית בו יומם ולילה, total immersion in sacred endeavors. This is not to imply that it is exclusively a 20th century issue. Already in Mishnaic times[35] scholars debated the virtues of combining secular studies with Torah learning. Maimonides[36] and his contemporaries were engaged in similar halachic disputes. Nonetheless, with the advent of virtually universal higher education and increased opportunities for Jews to participate in societal affairs, this issue has become מילתא דשכיחא a far more pressing matter than in previous generations.

Rav Moshe Feinstein[37] as well as Rav Ovadia Yosef[38] urge students whenever possible to focus primarily on Torah learning rather than on secular pursuits. In a recently published manual on Torah study, שערי תלמוד תורה,[39] Dr. Leo Levi cites the conclusions of four modern Jewish authorities regarding this issue. Generally they disapprove of formal advanced secular learning, especially on the university level, although allowing for certain extenuating circumstances. Early in the century, for example, Rav Avraham Yitzchak Bloch[40] of Telshe proposed a continuum of secular studies, ranging from essentially objective, neutral material (language, mathematics) posing no philosophical problems, which may be studied on a limited basis, and extending even to religious or philosophical polemic (such as Spinoza's essays), to be studied only by those who will need to know how to respond to questions of faith. Disciplines subject to varying interpretations (especially biology and medicine), some at variance with Torah ideology, may

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35. עיין ברכות לה: קידושין פב.
36. עיין רמב"ם פ"ג מהלכות ת"ת הלכה י', ולכאורה סותר עצמו בסוף הלכות שמיטה ויובל (פי"ג הלכה י"ג), עיין חידושי הגר"ז פ' חיי שרה דיש חילוק בין יחידי להמון עם.
37. שו"ת אג"מ יו"ד ח"ג סימן ע"ה
38. שו"ת יחוה דעת ח"ג סימן ע"ה
39. Dr. Leo Levi, "Shaarei Talmud Torah", Feldheim Publishers, Jerusalem, 5742.
40. תשובה למו"ר הרב שמעון שואב שליט"א התשובה פורסמה בקובץ המעין (ניסן תשל"ו) כל התשובות הובאו בשער יז פרק י"ב דף רפו־שיב

be pursued after a substantial background in Torah has been acquired and preferably even these sciences should be taught by competent G-d-fearing professionals. Two ancillary points suggested by Rav Bloch are quite interesting. He finds secular studies (of the objective, non-judgmental genre) to be particularly appropriate for women, and he also suggest that some limited secular training may be offered prior to embarking on a full scale *Beth Medrash* program, thus prefiguring the evolution of the modern Mesivta High School.

Rav Elchonon Wasserman[41] הי"ד suggested that a *Ben Torah's* approach to secular studies be fundamentally different from his attitude to Torah values. Torah learning is intrinsically important (לשמה) whereas secular studies should be pursued only on a pragmatic basis, as a legitimate means of earning a livlihood. Under no circumstances would Rav Wasserman entertain philosophical speculation or collaboration with hardened non-believers, even for the purpose of learning a skilled profession.

In a previously unpublished responsum, the Rogatchover Gaon differentiates between parental obligations and communal concerns with respect to secular studies. Parents are obligated by the Torah to teach children a trade — חייב אדם ללמד את בנו אומנות. However, the Jewish community may only perpetuate institutions of Torah learning (with the possible exception of medicine). But Rav Boruch Ber Leibowitz[42] opposes any form of secular study, arguing that even Rabbi S.R. Hirsch recommended *Torah Im Derech Eretz* (Torah together with secular culture) only as an emergency measure to stave off incursions of the Reform movement. Any further discussion of this very contemporary issue would be incomplete without careful perusal of Rav Hirsch's writings, especially in "Fundamentals of Judaism"[43] where he espouses his pedagogical and educational outline.

The methodological approach to Torah study is an important

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41. הובא בקובץ שיעורים ח"ב סימן מ"ז
42. ברכת שמואל קידושין סימן כ"ז
43. חלק גדול ממחשבתו הובא שם. Jacob Breuer, Timeless Torah, Feldheim Publications, New York, 1957.

component of educational theory. Should primary emphasis be placed on in-depth study, לימוד בעיון, or would "maximum coverage" בקיאות, be a more pertinent goal for today's budding Torah scholar? Many yeshivas seek a median solution — an עיון program in the morning followed by an afternoon of בקיאות study. A somewhat different view was suggested by the Rogatchover Gaon[44]. He recommends that the student learn a tractate first with the elementary commentaries (רש"י ותוספות) and then review the material with an advanced commentary (רא"ש). After an intially cursory review of the Talmudic text, the material should be reviewed for purposes of developing analytical skills and deciding the basic parameters of each tractate.

ילמדו תחלה בפשוט מסכת יבמות, רש"י ותוספות ...ואח"כ יחזרו לעמוד על סברא ועל גדר קידושין ויבום.

Baal Teshuva Movement: Conceptual Foundations and Halachic Implications

In recent years, world Jewry has appreciated and become increasingly sensitive to the needs of the so-called *Baal Teshuva*. The previously uncommited, unaffiliated Jew now returning to active observance of mitzvot (technically speaking, *Teshuva* implies having previously *deliberately* sinned, which is a far cry from the situation of most modern *Baale Teshuva*). This phenomenon, once a mere trickle, has emerged into an effective movement and a viable force within the Orthodox community. The proliferation of *Baale Teshuva* yeshivas dedicated to this segment is indicative of the movement's potential.

Regrettably, little if anything has been written about pedagogical techniques and halachic issues concerning the *Teshuva* movement. This researcher suggests that careful consideration of primary sources and the writings of Torah luminaries of past generations can be extremely useful in gaining insight into this phenomenon. Specifically, the author proposes to consider the

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44. שו"ת צפנת פענח ס' ה'ו.

underlying factors generating this mass *Teshuva* process (what social and cultural phenomena triggered this sudden resurgence among previously unaffiliated Jews) to consider appropriate methodology for teaching Torah to *Baale Teshuva* and consider halachic obligations of the Orthodox community stemming from the *Teshuva* movement.

Psychologists, social workers and other mental health practitioners[45] have often commented on the unique adjustment problems confronting *Baale Teshuva*. It is no mean feat radically to change one's lifestyle and social mores within weeks. Many adjustment problems may ensue from this process of swift realignment of values. Another factor contributing to occasional temporary maladjustment was identified by the author of *S'fat Emet*[46]. The *Baal Teshuva* perceives G-d's presence at all times, whereas the traditional Orthodox Jew subsumes his awareness of G-d in wordly activities and is thus perhaps better able to maintain a more relaxed posture. This sense of pressure, of being constantly in G-d's presence, שויתי ד' לנגדי תמיד, may contribute to occasional temporary adjusment crises.

Should the "newly repentant" be encouraged to sever all ties and associations with their previous affiliations? Again, Torah giants of the past generation deduce policy implications from primary sources. The *Meshech Chochma* suggest that he should retain some links with past commercial or professional ties, though not necessarily social contact, and warns of the danger of spiritual relapse of too stark and sudden a change.אבל בעל תשובה שכבר נשתרש בחטא אין נאה לילך פן יחזור לסורו.

The need for maintaining residual ties with previous

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45. For example, at the opening symposium of Agudath Israel's Annual Convention (Nov. 1978) the Bostoner Rebbe, Rabbi Levi Yitzchok Horowitz addressed himself to these concerns.

46. שפת אמת פרשת נצבים שנת תרל"ג ד"ה הקדים. (וזה תמצית דבריו "שעמידת צריך בעוה"ז להיות עושה כל מעשיו... לש"ש... ושיוכל לעשות עניני עוה"ז ומ"מ לא יפרוק עול מלכות שמים ויראתו אבל בעל תשובה צריך להיות תמיד יראת ה' על פניו ומה שצריק מתבונן לפרקים צריך להיות עמידת בע"ת תמיד כן, ע"ש

associations should not be confused with mediocrity. Rav Samson Raphael Hirsch[47] notes that Scripture insists upon ושבת עד ה' אלקיך complete return to Torah, not only a sense of drifting in the right directions.

One of the more popular programs among yeshiva youth currently is *Kiruv* קירוב, outreach to non-affiliated Jews. Organizations such as JEP, NCSY, *Chabad*, as well as a host of yeshivas for *Baale Teshuva* have done valuable work in this regard. Dr. Levi[48] seeks to define the halachic parameters of this mitzva. Where does Scripture obligate (or at least encourage) such "pseudo evangelical" activity? Furthermore, assuming an obligation of *Kiruv*, how much time otherwise devoted to Torah study may be skimmed off for these activities?

Dr. Levi adduces several biblical sources for this mitzva. He suggests that *Kiruv* is closely related to the biblical imperatives of הוכיח תוכיח[49] (to admonish a peer when necessary) and לא תעמוד על דם רעיך[50] (not to stand by idly when someone is in danger).

He reasons that if one is obligated to rescue a Jew in physical distress certainly one must equally resuscitate his spiritual well-being. Similarly, the commandment to return his lost property[51] extends not only to material goods, but to spiritual matters as well — to restore a "lost soul". Furthermore, that basic mitzva of ואהבת לרעך כמוך[52] loving one's fellow Jew, according to Rambam, implies sharing one's heritage as well as one's largesse with peers. Attempts to reach out are a superior manifestation of אהבת ישראל, love of Jews. Rambam and *Sefer Hamitzvot*[53] eloquently suggest that the mitzva to love G-d ואהבת את ד' אלקיך implies persuading other to increase their commitment to Judaism. שנהיה קוראים לבני אדם כלם לעבודתו יתברך ויתעלה "We should call all mankind to His service."

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47. רשר"ה פרק ל' פסוק ב' בסוף דבריו
48. שערי תלמוד תורה שער ב' בפרט פרק ב'
49. ויקרא י"ט י"ז
50. שם פסוק ט"ז
51. דברים פרק כ"ב פסוק א'
52. ויקרא י"ט י"ח
53. ספר המצות מצות עשה ג'

The vital importance of *Kiruv* work is recognized by contemporary rabbinic leaders. Although they caution that Torah learning should not be needlessly interrupted, Rav Moshe Feinstein[54] as well as Rav Chaim Shmulevitz[55] ruled that *Kiruv* may be classified as מצוה שא"א לעשות ע"י אחרים an endeavor that can best be realized through yeshiva youth personally. When necessary, some limited time may be allocated from scheduled learning programs for outreach efforts. Rav Moshe Feinstein himself proposes that a maximum of ten per cent of learning time be devoted to these efforts.

In an address to Day School teachers Rav Hutner cited[56] the Talmudic excerpt "Whosoever teaches a child Torah, merits a seat in the Heavenly Yeshiva." כל המלמד את בן חברו תורה זוכה ויושב בישיבה של מעלה In effect, one involved in *Kiruv* performs a role similar to that of iron smelters, extracting precious metal from dross, liberating Jewish souls from assimilated backgrounds להוציא יקר מזולל. Rav Hutner also urged that educators engaged in *Kiruv* work remain in close touch with rabbinic advisors, arguing that often compromises have to be made in the interests of *Kiruv*. Only Torah leadership can determine which matters retain genuine priorities and which may be temporarily superseded.

While stressing outreach, Judaism frowns upon any outright evangelical work, and missionary activity to Gentiles for the purpose of conversion to Judaism is strongly discouraged. Indicative of Judaism's posture of non-interference with other creeds is the prohibition of conducting Torah classes for non-Jews.[57]

The wide range of halachic problems which have been brought to the attention of the *poskim* in the past few generations is an indication of the complexity of the issues as well as a measure of the overwhelming importance Torah education has for the Jewish community.

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54. Jewish Observer, סיון תשל"ג הובא בשערי תלמוד תורה שער ב חלק א.
Ibid. תמוז תש"מ עמוד ט
55. Jewish Observer, סיון תשל"ג
citing Jewish Parent, Vol. II No. 3, Dec. 1939.
56. ב"מ פה.
57. חגיגה יג.

RECENT PUBLICATIONS

As a service to our readers, the Journal is inaugurating a new feature — a listing of recent publications of Jewish interest which have come to our attention:

With Perfect Faith *The Foundations of Jewish Belief, by Rabbi J. David Bleich*

In this volume, Rabbi Bleich includes selections from major figures of Jewish philosophy and Maimonides' Thirteen Principles of Faith. His introductions to each of the Thirteen Principles place in context each of the selections which follow. He traces the development of dogmatic principles within Judaism, focusing especially on the Maimonidean formulation and the opposition it aroused. The book includes some essays never before translated into English.

The 613th Commandment, *by Rabbi J. Simcha Cohen, published by Ktav, NY*

The author articulates the various ramifications of the mitzvah of writing a Sefer Torah, discussing such topics as the propriety of donating a Sefer Torah to a synagogue, the halachic significance of the ceremonial rituals, the interrelationship of the mitzvah with Keri'at HaTorah, the role of women in learning Torah and other topics.

Contemporary Halalakhic Problems, *vol. II, by Rabbi J. David Bleich*

This is the second volume in Rabbi Bleich's outstanding study of halachic responsa and treatment of contemporary social, political, technological and religious problems. Topics under discussion include indirect coercion in compelling a *get;* impotence as grounds for divorce; cheating in schools; hazardous medical procedures; the use of Braille text *haftorahs;* the use of Pampers on Shabbat; Entebbe; and others.

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As each new volume to come from the pen of the late Rabbi Aryeh Kaplan is published, American Jewry is reminded again how much the community has lost with the passing of this outstandingly gifted and erudite scholar whose exposition of many facets of Jewish culture in his lucid and flowing style did much to open the doors of Jewish knowledge for the English-speaking public. Two recent selections from his pen, published by Moznaim Press, exemplify the high standards of integrity in his scholarship.

Made in Heaven was written in order to give couples a new insight into the depth and spiritual power of the Jewish wedding ceremony, its symbolisms and relevance for those about to be married. It also seeks to impart an awareness of that ceremony as the foundation of a life built on ideals of Torah and dedication.

There is much in this book to inspire not only the prospective bride and groom but also their families. For those with a wider background of Jewish knowledge, the footnotes will provide delightful excursions into tangential matters as well as learned discussions of halachic fine points.

In **The Living Torah** Rabbi Kaplan provides a modern "translation" of the Five Books of Moses based on traditional Jewish sources as well as scientific and secular scholarship. The book is not intended as a literal translation but rather as a format to convey the sense of biblical verses in narrative form, frequently with midrashic interpolations in the text. This feature will be perceived as a drawback for the serious scholar, since there is no differentiation in the English rendition between the biblical and aggadic material, nor is it clear where Rabbi Kaplan employs the interpretation of the classic commentaries rather than the literal reading of the verse. However, for those not ready to grapple yet with many biblical commentaries in the original, this volume is an important step in making available the traditional body of scholarship which is essential to the study of Torah. Maps, charts, and historical footnotes also add interest and clarify difficult passages.