



CONVERSATIONS

Orthodoxy and Ethics



CONVERSATIONS

Orthodoxy and Ethics

Autumn 2010/5771

Issue 8

CONVERSATIONS

CONTENTS

Editor's Introduction	<i>v</i>
Economic Growth and the Moral Society BENJAMIN M. FRIEDMAN	1
Interpersonal Mitzvoth and Mitzvoth Between Humans and God DANIEL SPERBER	9
On the Need for an Ethical Preparatory Torah Education ZECHARYAH TZVI GOLDMAN	32
Mussar: A Psychoethical Model for Our Time MEL GOTTLIEB	39
"The Chosen People": An Ethical Challenge HAYYIM ANGEL	52
Truth and Consequences: A Talmudic Tale on Interpersonal Ethics JOEL WOLOWELSKY	61
Émile Zola's Moral Outrage ROBERT S. APRIL	71
How We Judge the Judges MAIMON SCHWARZSCHILD	83
Single Women Who Want to Have a Baby YUVAL CHERLOW	95

Ethics of the <i>Agunah</i> Problem	112
RACHEL LEVMORE	
Safe Jewish Homes	124
MENACHEM CREDITOR	
Breaking the Silence	128
ELAINE WITMAN	
A Modern Orthodox Approach to Interfaith Dialogue	136
ABRAHAM UNGER	
Environmental Issues in Israel	143
SARAH NADAV	
Creatures in the Nation-State: Torah Ethics of Animal Rights	152
SHMULY YANKLOWITZ	
Jewish Business Ethics in a Secular Society: A View from the Trenches	163
STEPHEN P. RAPPAPORT	

SUBMISSION OF ARTICLES

If you wish to submit an article to *Conversations*, please send the editor (mdangel@jewishideas.org) a short description of the essay you plan to write. Articles should be written in a conversational style, without footnotes, and should be submitted typed, double spaced, as word documents.

Articles reflect the views of their authors, and do not represent official positions of the Institute for Jewish Ideas and Ideals.

Conversations welcomes “letters to the editor,” commenting on articles that appear in its pages. Letters should be emailed to the Editor.

Conversations will be published three times per year: May, September, and January. Submissions must reach the Editor at least eight weeks before the first day of each publication month.

Editor's Introduction

The Torah commands us to love God with all our heart, soul, and might. The Talmud explains (*Yoma* 86a) that this commandment calls on us to make the Name of Heaven beloved by living exemplary religious lives. We thereby demonstrate the greatness of Torah, and attract others to the ways of God.

Ethical living is a vital ingredient in Judaism. Service to God is not—and cannot be—separated from our honesty, integrity, and compassion. This issue of *Conversations* focuses on Orthodoxy and Ethics, highlighting the centrality and scope of ethical concerns within Torah Judaism. If we are to make God's name beloved by others, we must live admirable and righteous lives in consonance with the teachings of Torah.

We open this issue with an article by Professor Benjamin M. Friedman on the impact of national material wellbeing on national moral wellbeing. To maintain a just and idealistic society, attention must be given to economic growth.

Professor Daniel Sperber discusses the primacy of interpersonal mitzvot. We then have articles on learning and teaching ethics—by Rabbi Zechariah Goldman, Rabbi Mel Gottlieb, Rabbi Hayyim Angel, Dr. Joel Wolowelsky, and Dr. Robert S. April. Dr. Maimon Schwarzschild writes about the ethical qualities we expect in our rabbis and judges.

We then have a series of articles relating to Jewish family life. Rabbi Yuval Cherlow addresses the serious dilemma of unmarried Jewish women in their late 30s–early 40s who wish to have babies. Dr. Rachel Levmore focuses on the ethical issues connected with the *agunah* problem. Rabbi Menachem Creditor and Elaine Witman write on the painful topic of physical and emotional abuse within our families and communities.

We next turn to a range of topics with ethical implications. Rabbi Abraham Unger writes of an interfaith initiative in areas of social justice—and the role of Modern Orthodoxy in this kind of effort. Sarah Nadav explores major environmental issues in the State of Israel. Rabbi Shmuly

Conversations

Yanklowitz expounds on animal rights in Judaism. Stephen Rappaport deals with business ethics in a secular society.

The goal of *Conversations* is to encourage serious thinking and discussion on vital topics—to foster an intellectually vibrant, compassionate, and inclusive Orthodox Judaism. We invite readers to visit the website of the Institute for Jewish Ideas and Ideals, www.jewishideas.org; and to support the Institute in its important work.

We express our appreciation to Jack and Susan Rudin for their support of the Institute's work, and for helping to sponsor this issue on Orthodoxy and Ethics.

Economic Growth and the Moral Society

BENJAMIN M. FRIEDMAN

(Benjamin M. Friedman is the William Joseph Maier Professor of Political Economy at Harvard University. The ideas expressed in this article draw in part on his book, The Moral Consequences of Economic Growth (Vintage paperback, 2006).)

The premise of economic growth has come under question, in many parts of the world today, from a variety of directions. We are aware, of course, that moral thinking in practically every known culture enjoins us not to place undue emphasis on our material concerns. But today there is more to it than that. With heightened sensitivity to the strains that industrialization often brings, including the possibility of permanent climate change, many people in the higher-income countries now question whether further economic expansion is worth the costs. In the developing world, where the advantages of rising incomes are more evident, some people question whether economic growth, and the policies that promote it, are just vehicles for exploitation by foreigners. And now that the current financial crisis has sharply depressed production and incomes in many countries, both industrialized and not, an unusually large number of citizens sense that their economies aren't growing anyway.

A turn away from economic growth is not what anyone should want, however—and not just on narrowly economic grounds. The experience of many countries suggests that when a society experiences rising standards of living, broadly distributed across the population at large, it is also likely to make progress along a variety of dimensions that are the very essence of what a free, open, democratic society is all about: open-

ness of opportunity for economic and social advancement; tolerance toward recognizably distinct racial, or religious, or ethnic groups within the society, including new immigrants if the country regularly receives immigration; a sense of fairness in the provision made for those in the society who, whether on account of limited opportunities, or lesser human endowments, or even just poor luck in the labor market, fall too far below the prevailing public standard of material well-being; genuinely contested elections that determine who controls the levers of political power; and democratic political rights and civil liberties more generally. Conversely, experience also suggests that when a society is stagnating economically—worse yet, if it is suffering a pervasive decline in living standards—it is not only likely to make little if any progress in these social, political, and (in the eighteenth-century sense) moral dimensions; all too often, it will undergo a period of rigidification and retrenchment, sometimes with catastrophic consequences.

The chief reason so many societies behave in this way stems from the familiar tendency of most people to evaluate how well off they are not by considering their incomes or living standards in absolute terms but relative to some benchmark. More specifically, there is substantial evidence for two separate benchmarks by which people judge such matters. Most people are pleased when they are able to live better than they, or their families, have lived in the past. And they are pleased when they are able to live better than their friends, neighbors, coworkers, and any others with whom they regularly compare themselves.

The pervasive tendency for people to evaluate their economic situation on these relative benchmarks, rather than absolutely, explains a variety of familiar features of economic and psychological behavior that otherwise would be puzzling—for example, the fact that within any one country, at any given time, people with higher incomes are systematically happier than those with lower incomes, but there is no corresponding increase over time in how happy people are on average even though average incomes may be steadily increasing. As Adam Smith observed long ago, “all men, sooner or later, accommodate themselves to whatever becomes their permanent situation,” so that “between one permanent situation and another there [is], with regard to real happiness, no essential difference.” Hence the critics of growth who maintain that higher incomes per se will not make people happier are mostly right.

But this tendency toward a relative rather than an absolute perspective in such matters also explains why market economies, as long as they deliver rising living standards to most of a society's population, lead more often than not to tolerance, generosity, democracy, and many of the other recognizable features of an open society. The economically self-protective instinct that underlies racial and religious discrimination, antipathy toward immigration, and lack of generosity toward the poor naturally takes a back seat to other priorities when people have the sense that they are getting ahead.

An important consequence is that many countries throughout the developing world probably will not have to wait until they reach Western levels of per capita income before they begin to liberalize socially and democratize politically. If they can manage to grow economically (alas, many parts of what we call "the developing world" are not actually developing), and if the fruits of that growth are shared among their populations, in time liberalization and even some forms of democratization are likely to follow.

The experience of the Western democracies also makes clear that the connection between rising living standards and either social attitudes or political institutions is not limited to low-income countries. In the United States, for example, eras in which economic expansion has delivered ongoing material benefits to the majority of the country's citizens—the decade and a half following the Civil War, the decade and a half just prior to World War I, the quarter-century immediately following World War II—have mostly corresponded to eras when opportunities and freedoms have broadened, political institutions have become more democratic, and the treatment of society's unfortunates has become more generous.

By contrast, when incomes have stagnated or declined, reaction and retreat have been the order of the day. The rise of Jim Crow laws and the widespread anti-immigrant (and anti-Catholic and anti-Semitic) agitation of the 1880s and 1890s; the extraordinary appeal of the reborn Ku Klux Klan, and the adoption of the most discriminatory immigration laws in our nation's history (the Emergency Quota Act and then the National Origins Act) during the 1920s; and the rise of the right-wing "militia" movement, together with a new groundswell of anti-immigrant sentiment, in the 1980s and early 1990s (before the strong economic growth of the mid and latter 1990s effectively arrested both), are all familiar examples. A major

exception in U.S. experience was the depression of the 1930s, which instead led to a significant opening of American society and strengthening of American democracy—perhaps because the economic distress of that time was sufficiently widely shared that the sense of being in the same sinking ship together overwhelmed the more competitive instincts that usually prevail when people realize they are not getting ahead.

Jews have often been targets of the rise in intolerance that follows when incomes stagnate. Many of the most prominent leaders of America's Populist movement in the 1880s and 1890s were openly anti-Semitic. Both Ignatius Donnelly, who wrote the Populist Party's platform, and William Harvey, who wrote the leading free silver economic tract of the time, also wrote novels replete with Jewish villains. (Even Harvey's best-selling financial tract included a cartoon with an English octopus, labeled "Rothschilds," strangling the world.) Mary Ellen Lease, the fiery Populist orator who brought the free silver campaign to popular attention, called President Grover Cleveland an agent of Jewish bankers and British gold. In the 1920s the revived Ku Klux Klan was proudly anti-Semitic. Few Congressmen spoke openly of the religious bias inherent in the new immigration policies enacted in 1921 and 1924, but the reflection of the religious map of Europe was plainly evident in the legislation; under the new laws U.S. immigration from areas from which Jews primarily originated shrank from 700,000 per year to 20,000. Although the 1930s ultimately proved a time of broadening of American democracy, an increasingly strident anti-Semitism was clearly on the rise. Father Charles Coughlin drew 40 million listeners to his bigoted weekly rants on the radio, and Charles Lindbergh's America First movement likewise enjoyed widespread popular support. Although the U.S. Senate confirmed Felix Frankfurter to replace Louis Brandeis on the Supreme Court in 1939, the hearing (far more so than Brandeis' in 1916, in a different economic climate) exhibited open anti-Semitism. Even in the immediate aftermath of Kristallnacht in November 1938, both the public and Congress opposed the idea of admitting 20,000 German Jewish refugee children.

The United States is hardly the only long-established Western democracy where a connection between rising living standards and the strengthening of democratic freedoms is evident. Other countries' experience displays similar patterns. Conversely, many of the horrifying anti-democratic phenomena that so marred Europe's twentieth-century history

ensued in a setting of pervasive economic stagnation or decline. Hitler's rise to power in the wake of the economic and political chaos of the Weimar Republic is a familiar story, but it is worth recalling that as late as 1928 the Nazi party drew only 2.8 percent of the vote in German national elections.

What made the difference, soon thereafter, was the onset of the Great Depression, which affected Germany more than any other European country. (Earlier on, what many historians consider the first major push of modern German anti-Semitism appeared during Germany's economic stagnation in the 1870s and 1880s.) Similarly, France's Vichy regime, which willingly collaborated with the Germans—during the war France was one of only two European countries to turn over to the Nazis Jews from territories that the Germans did not occupy—emerged out of a protracted period of French economic stagnation during which right-wing nationalist and anti-Semitic groups such as the Action Francaise, Jeunesse Patriots, and the Croix de Feu (“Cross of Fire”) worked, both behind the scenes and through street violence, to undermine French democracy. As my late colleague, the economic historian Alexander Gerschenkron, observed during the war, “even a long democratic history does not necessarily immunize a country from becoming a ‘democracy without democrats.’”

The connections between economic growth and the democratic character of society need not be one-directional. The idea that rising living standards foster tolerance and democracy does not preclude the parallel notion that these features of society enhance the ability of any economy, but especially one based primarily on private initiative and decentralized markets, to achieve superior performance over time. Different political institutions and different legal frameworks, as well as different public attitudes and private behavior, help account for why some countries enjoy more economic success than others. The evidence is especially strong that effective “rule of law,” including the protection of property rights, matters for economic growth. It does not require an advanced degree in economics to know that barring half of the population from certain jobs because they are of the “wrong” sex, or still others because they are of the “wrong” race or “wrong” religion, does not result in the most efficient allocation of an economy's human resources.

As a result, a society may find itself in a virtuous circle in which economic growth and democratic freedoms mutually reinforce one another or, less fortunately, stuck in a vicious circle in which the stagnation of liv-

ing standards blunts any movement toward democratic reform while adverse political institutions and the absence of basic freedoms retard economic improvement for most citizens. Leaving aside the periodic ups and downs of market-driven economic growth in most Western societies, the long-term experience of countries like the United States is a rough example of the former. The current plight of many countries in sub-Saharan Africa presents even sharper examples of the latter.

Especially in the wake of the financial crisis that began in 2007, many citizens of countries around the world have sensed that they are not getting ahead. But importantly, in many higher-income countries the problem dates to well before the crisis began. In the United States, for example, even before the onset of the latest downturn, most people had seen little economic improvement throughout the 2000s. In 2007, the median family income (the income of families exactly in the middle of the U.S. income distribution) was \$63,700 in today's dollars. Back in 2000 the median family income, again in today's dollars, was \$63,400. The gain—not per annum, but over the entire seven years—was less than one-half of one percent. The U.S. economy as a whole expanded solidly during these years, but the gains from that expanding production accrued very narrowly, mostly to people already at the top of the scale. The rest of the nation's families saw little improvement. Although the precise timing differs, the populations of Italy, France, the U.K., and many other countries as well have experienced roughly similar income stagnation.

Then came the crisis. The current financial crisis and the recession that followed have constituted one of the most significant sequences of economic dislocations since World War II.

In many countries (the United States included), the real economic costs—costs in terms of reduced production, lost jobs, shrunken investment, and foregone incomes and profits—exceeded those of any prior post-war downturn. Most American families were not immune. In 2008, the U.S. median family income fell to \$61,500, a lower level than in any year since 1998. We do not yet have the figure for 2009, but it seems clear that last year family incomes dropped again. Here too, the pattern is similar in many other countries that have likewise suffered in the financial crisis and then the economic downturn.

Nor do we have any solid basis for expecting a rapid recovery of incomes, either in the United States or abroad, now that the worst of the

crisis has passed and many of these countries' economies have started to turn around. Just now the greatest challenges appear to be in Europe, where the combination of current monetary institutions and the legacy of past fiscal practices present what seems to be an insurmountable bar to vigorous recovery. But near-term growth prospects in the United States are modest as well, and they, too, are vulnerable to a host of contingencies.

The majority of American families, therefore, have now gone through an entire decade—or perhaps longer—with no increase in their incomes or improvement in their living standards.

And unless the economy recovers rapidly, the situation may persist a good while longer. Past experience suggests that the consequences of this kind of prolonged stagnation—here as well as in other countries—will spill over well beyond the realm of economics and business. The collateral damage will include our race relations, our religious tolerance, our generosity toward the disadvantaged (as Adam Smith also wisely observed, “before we can feel much for others, we must in some measure be at ease ourselves; if our own misery pinches us very severely, we have no leisure to attend to that of our neighbor”), and the civility of our political discourse. No informed citizen can be unaware that the damage, in each of these areas, has already begun to occur. Given the country's historical demographic make-up, the most frequently observed reaction in such circumstances has been a hardening of attitudes toward new and recent immigrants, and this has already begun. Other countries, presumably with differing specifics, will probably face similar experiences. The symptoms often differ from one country to the next, but the disease of economic stagnation is not a pleasant one anywhere.

The urgent need, therefore, is not merely to get the economy's production increasing again, although that is a necessary first step, but to enable the majority of families once again to earn rising incomes and enjoy improving living standards. Most citizens, in the United States no less than elsewhere, have exhibited impressive patience. It is best not to try that patience too far.

If a key part of what matters for tolerance and fairness and opportunity, not to mention the strength of a society's democratic political institutions, is that the broad cross-section of the population have a confident sense of getting ahead economically, then no society—no matter how rich it becomes or how well-formed its institutions may be—is immune from

seeing its basic democratic values at risk whenever the majority of its citizens lose their sense of economic progress.

The current disillusionment with economic growth—in some quarters, even a fashionable hostility—reflects a failure to recognize these broader relationships. But that failure, and the rejection and hostility to which it gives rise, are, in turn, impediments to restoring both our economy and our society to a more beneficial (and benevolent) trajectory. Changing economic course normally requires policy action. In a democracy, making policy choices requires public support.

The familiar balancing of material positives against moral negatives when we discuss economic growth is a therefore false choice. The parallel assumption that the way we value material versus moral concerns neatly maps into whether we should eagerly embrace economic growth or temper our enthusiasm is wrong as well. Economic growth bears benefits that are both material and moral. As we take up the hard decisions that will inevitably surround any effort to restore our economy's vitality in the aftermath of the worst financial crisis and the deepest and most protracted economic downturn in two generations, it is important that we bear these moral positives in mind.

Interpersonal Mitzvoth and Mitzvoth Between Humans and God

DANIEL SPERBER

(Dr. Sperber is President of the Makhon haGavoah leTorah at Bar-Ilan University. Author of numerous works in Jewish law, custom, and theology, he was awarded the Israel Prize by the State of Israel for his monumental contributions to Jewish scholarship. This article is a considerably amplified version of Dr. Sperber's piece in Netivot Pesikah, Jerusalem 2008, Appendix 2, pp. 181–192.)

It is well known that all mitzvot fall into two major categories: those between humans and God—*bein adam laMakom*, and those between humans and their fellows—*bein adam leHaveiro*. The question we wish to discuss here is which of these two categories is, as it were, more weighty. Formulated differently: If there were to be a clash between two different mitzvot from these two categories, which one would prevail?

At first blush one might well assume that our relationship toward our Maker is clearly of such primal importance, that in all such cases we must give mitzvot directed toward God our first priority. Indeed this seems to have been a common presumption among some people during the Second Temple times, as we learn from the very disturbing story in B. *Yoma* 23a:

It once happened that there were two Kohanim who had equal [rights to carry out a sacrifice], and they were running up the gangway [to the altar]. One of them got ahead of his fellow by within four cubits, and he took a knife and stabbed it into his fellow *kohen's* heart. . . . The father of the young *kohen* came and found his son convulsing. He said: May he be your atone-

ment, for my son is still convulsing (i.e., still alive), and the knife has not been made ritually impure. This comes to teach you that the purity of [Temple] vessels was more serious for them than bloodshed. . . .

This very shocking story reflects a not uncommon notion as the scale of priorities to be found in certain sectors of Jewish religious society.

But the fact that we find this episode so shocking and unacceptable indicates that we must reconsider the moral and halakhic presumptions underlying the tale. And indeed, when we examine this issue more closely we shall see that the opposite is the case, namely, that interpersonal mitzvot have a priority over those between humans and God. So formulates R. Meir ben Raphael Plotzky, in his classic *K'lei Hemdah* to Deuteronomy 25:26 (sect. 5, subsection 4, Piotrkow 1902. *KiTetze* p. 228):

Concerning the issue of one who is engaged in one mitzvah that he is exempt from another if he is engaged in a mitzvah between man and his Maker—he is not exempt from a mitzvah between a person and his fellow. . . . However, this is only the case with regard a mitzvah between a person and his Maker. We have not heard that this would exempt him from a mitzvah between a person and his fellow, for the ultimate end that would serve his fellow cannot be pushed aside because one is engaged in a mitzvah directed toward one's Maker.

We see then, that when there is a clash between these two categories, it is the “social” mitzvah that overrides the “ritual” one.

We find this principle also in the *S'dei Hemed* of R. Hayyim Hezkiahu Medini (vol. 5, p. 233b, *Klal* 45) in the name of the *Shem Aryeh*, by R. Aryeh Leibush Bolhauer [Vilna, 1873–1874], in the additional response at the end of the book sect. 3. There, he solves a certain question raised by the Tosafot to *Shevuot* 44b in the following manner:

In B. *Rosh haShanah* 28a we learn that someone who takes upon himself by a vow not to receive any sort of benefit or enjoyment from a spring, is permitted to bathe in that spring for a ritual ablution, for mitzvot are not for personal benefit. The Tosafot ad loc. ask as follows: Surely in doing so, he will benefit according to the view of Rav Yosef in that he is a paid guardian (*shomer sakhar*)?

Let me explain this in greater detail. Rav Yosef is of the opinion that if someone finds a lost object and keeps it until the owner comes to claim it, his legal status is that of a paid guardian; the reason being that while he is

engaged in looking after the object, making sure it is in no way damaged, he will be exempt from giving a poor man who comes to his door a small gift of charity. This is called *peruta deRav Yosef*, Rav Yosef's penny. In that he does not have to give out a penny, it is as if he has earned it. Hence, he is a paid guardian. According to this view, if, while the person is having his *ritual* oblution, a poor man would come begging for a donation, he would be exempt, since he is already engaged in a mitzvah, and therefore he would get a monetary benefit from not giving the "penny." How then, ask the Tosafot, can he be permitted to bathe in the spring when he has vowed to have no sort of benefit from it? The answer that the *P'nei Aryeh* gives is that such exemption from charitable giving is only the case when the mitzvah he was engaged in was toward his fellow man, looking after the lost object. But if he is engaged in a ritual mitzvah, toward his Maker, he is in no way exempt from the mitzvah of giving charity, which is one directed to his fellow man. This then is fully in line with what we saw to be the principle in the *K'lei Hemdah*.

Although this may appear to be a rather radical view formulated by later authorities, it is actually already to be found in the Rosh (Rabbenu Asher), in his commentary to *Peah* 1:2. He wrote (ed. Samuel Edwin, Marlborough, Australia, no date):

For the Holy One blessed be He is more desirous of mitzvot that are done to the satisfaction of human beings, than those that are between a person and his Maker.

See on this what Rabbi Elhanan Wasserman wrote in his *Kovetz Maamarim* (ed. R. Eliezer Simchah Wasserman, his son, Jerusalem 1963, pp. 42–43):

For "among two hundred is to be found a hundred" (a common rabbinic idiom), meaning that in all mitzvot between a person and his fellow there is also a component between a person and God. Why then should they be lessened by being between a person and his fellow? And it is for this reason that the Rosh saw interpersonal mitzvot as being weightier, for they contain both elements.

I believe this notion is also to be found in the Ramban. On the verse in Leviticus 23:22—"And when ye reap the harvest of your land, thou shalt not make clean riddance of the corners of thy field when thou reapest, neither shalt thou gather any gleanings of thy harvest; thou shalt

leave them unto the poor and to the stranger: I am the Lord your God”— he writes as follows:

Rashi wrote [not in our Rashi] The Scripture repeated itself to make a person transgress two prohibitions. . . . Rashi seeks to answer the question why this verse appears after the section dealing with the bringing of the *omer*. Moreover, these commandments of *Peah* etc. have already appeared in Leviticus 19:9–10, in a very similar formulation.

However, Ramban rejects Rashi’s explanation, and suggests:

In my view, the correct interpretation is that the harvesting mentioned refers to what is brought at the beginning of the section (verse 10), namely that when you come into the land and reap the harvest and bring a sheaf of the first fruits of the harvest, you should not reap the corner of your field for the *omer*, nor glean the gleanings, meaning that the mitzvah [of the *omer*] does not supersede those prohibitions.

The Ramban here is teaching us that the mitzvah of bringing the *omer* before the altar of God cannot push aside those mitzvot aimed at helping the poor. (R. Hayyim ibn Atar, in his *Orah Hayyim* ad loc., follows this interpretation.)

In light of the above we can perhaps better understand the well-known rabbinic statement that whereas sins against God are expiated on Yom haKippurim, those against fellow humans are not expiated on Yom haKippurim until the sinner appeases the person against whom one sinned (B. *Yoma* 85b, and cf. *Numbers Rabbah* 11:7).¹

My grandfather, Rabbi David Sperber, of blessed memory, in his commentary to tractate *Avot* 3 (*Mikhtam leDavid*, Brooklyn 1997, p. 64) linked this concept to the statement of Rabbi Haninah ben Dosa (*Avot* 3:11):

He in whom the spirit of mankind finds pleasure, in him the spirit of God finds pleasure; but he in whom the spirit of mankind finds no pleasure, in him the spirit of God finds no pleasure.

And in this context we should recall the famous difference of opinion among the later authorities, some of whom hold that if the sinner does not appease his fellow, than those sins against God will also not be expiated by Yom haKippurim.²

I cannot restrain myself from recalling the wonderful story that R. Yehudah Leib Maimon records in his *Toledot haGra*, Jerusalem 1970, p. 7,

concerning the Rabbi of Frankfurt R. Avraham-Abush, a contemporary of the Gaon of Vilna:

They relate that once the shohetim of Frankfurt came before him with a query concerning [the kashruth of] a lung, a matter on which the Rama and the rest of the Polish authorities ruled most stringently. The incident took place on the eve of a festival, and the matter was one potentially involving a very considerable monetary loss for the impoverished slaughterer. The members of the Bet Din wished to rule stringently and declare the meat not kosher, but R. Avraham-Abush began to search for ways of finding it kosher. The judges of the Bet Din insisted on their position that it is impossible to rule leniently against the view of the Rama and his colleagues, but R. Avraham-Abush argued with them, discussing the halakhic issues involved, and finally ruled that the meat was kosher. The members of the Bet Din were astonished, asking him: How could one possibly rule leniently, declaring the meat kosher against the ruling of the Rama and the great authorities of Poland who held the same opinion?!

R. Avraham-Abush replied to them as follows: I prefer at the end of my days that [before the Heavenly Court] I will argue my case with the Rama and his colleagues, rather than with this poor slaughterer. The slaughterer is a simple man, and it will be very difficult for me to argue my case with him before the Heavenly Court, if he brings me to court claiming that I declared his animal *tareif*, and that in doing so I caused him great monetary loss,³ and that I damaged his business on the eve of the festival. But I am sure that when I lay out my arguments before the Rama and his colleagues, we will reach an agreement. . . .

The logic in R. Avraham-Abush's position is clarified in a similar tale told by Yaakov Rimon and Yosef Zundel Wasserman in the book, *Shemuel beDoro: R. Shmuel Salant z"l Rabbah shel Yerushalayim 1841–1909, Hayyav uPoalav*, Tel Aviv 1961, pp. 122–126:

Once upon a time some learned rabbis were arguing with him (R. Shmuel Salanter) on a case where he had ruled "kosher," and needless to say he refuted their counter-arguments. One of them turned to him and said to him: You have refuted our arguments, but what will happen when you come before the Heavenly Court and have to argue with the Bet Yosef and the Rama? He replied as follows: Surely you will agree with me that it will be better for me to argue my case with them, since I believe that I understood in depth their opinion, rather than having a claim against me on the part of the ox [i.e., on the part of the owner of the ox] that I incorrectly declared *tareif*. . . .

Both of these tales have a common denominator: namely, that if the rabbi ruled incorrectly, declaring *tareif* meat kosher, he has sinned against God, and Yom haKippurim will atone for this sin. But should he have ruled kosher meat as *tareif*, he will have caused damage, hurt, and monetary loss to the slaughterer, and this is a sin against his fellow human, a sin for which Yom haKippurim does not automatically atone. He thus preferred to err on the side of leniency rather than risk erring on the side of stringency. (See my discussion in *Darkah Shel Torah* pp. 140–141.)

We find much the same idea reflected in the Netziv (R. Naftali Zvi Berlin), in his *HaEmek Davar* to Genesis 20:7, “[Now therefore restore the man his wife; for he is a prophet], and he shall pray for thee, and thou shalt live”:

According to what we have explained . . . that the sin was that [Avimelech] caused grief to our forefather Abraham, surely he only needed to appease him, and there was no need for prayer. However, from here we may learn that one who sins against his neighbor also sins against God, and it is not sufficient to appease one’s neighbor alone. One must also beg forgiveness from God. And for this reason he needed Abraham’s prayer, in order to be completely expiated.

Perhaps we may here add that which we find in *Sefer haRokeah* sect. 369 ad fin., namely that a person who is sitting in the synagogue, wrapped in his tallit and with his tefilin on his head and who is reciting liturgical songs, must, nonetheless, rise up before his teacher, since he can carry out both actions simultaneously. Now there are early authorities who held that the principle that one who is engaged in one mitzvah is exempt from another is also the case when both could be carried out. (See *Shulhan Arukh Orah Hayyim* 38:8, and in the *Beur Halakha* *ibid.*, and also R. Yaakov Hayyim Sofer, *Brit Yaakov*, Jerusalem 1985, sect. 2, p. 36.) The author of the *Rokeah*, R. Elazar of Germaiza, was a disciple of R. Yehudah (b. R. Shmuel) he-Hassid, the author of *Sefer Hassidim*. It is the view of R. Yehudah he-Hassid that even if one can carry out both mitzvot, one is exempt from doing so, if one is engaged in a prior mitzvah; and this, indeed, is the view of R. Elazar Rokeah himself (*Rokeah, Hilkhhot Sukkah* sect. 299; see Sofer *ibid.*). Why then should one engaged in praising the Lord in the synagogue have to rise up before his teacher? He is already engaged in a mitzvah, and therefore exempt from others! Surely, this is

only because ritual synagogue worship is directed toward God, but respect for one's teacher is between a person and his fellow, and he is not exempt from it. This, too, is the ruling of the Hidah, R. Hayyim Yosef David Azulai, that even in the hour of prayer one rises before a Torah scholar, (*Birkei Yosef Orah Hayyim* sect. 244:1; and see Sofer *ibid.* note 8 on p. 37).

It would then appear that this is a basic principle in halakhic and ethical thought, that interpersonal mitzvot have some kind of greater virtue than those directed toward God.

We find this principle reflected in a passage in Rambam, *Hilkhot Rotzeah* 4:9. There he writes as follows (and is also quoted in the *Semag* [*Sefer Mitzvot-Gaddol*], negative commandment no. 163):

Even though there are more serious sins than murder, they do not destroy the order of society like murder. Even idolatry . . . and the desecration of the Sabbath are not as [serious] as murder; for these sins are of the [category of sins] between humans and the Holy One blessed be He, whereas murder is of [the category of] sins between a person and his fellow.

There is a tradition in the name of the late R. Aharon Soloveichik that when he was asked concerning the gravity of the sin of homosexuality he replied "It is terrible. It is almost as great a sin as cheating in business."⁴

Indeed, the same R. Levi (B. *Baba Batra* *ibid.*) states that "theft from an individual is more serious than theft from that which has been dedicated to God. . ." Here again we see the relative weight of these two categories of mitzvot, and conversely *aveirot*—sins.

We may perhaps add yet another possible insight. The *Kolbo*, *Hilkhot Evel veTumat haGuf*, ed., David Avraham, vol. 7, Jerusalem 2002, 71, raises what he calls "a very weighty question"—namely that "there are two mitzvot that contradict one another" (or, as the *Orhot Hayyim* emended: "seem to contradict one another," *ibid.* note 314), namely: the seriousness of coming into contact with corpse-related uncleanness, and the very important mitzvah of burying an untended corpse—a *met mitzvah*.⁵ He goes to considerable depths to solve this apparent contradiction (*ibid.* 71–75, and the editor's notes *ad loc.*). However, we would suggest that the laws of impurity are basically ritual laws, and hence God-related laws, whereas the burial of an untended body is a person-related law, since the dead were thought to be sensitive to their state, and certainly live people would wish themselves to be properly buried. Hence, the mitzvah of bury-

ing a *met mitzvah* has priority over the laws warning us against becoming impure by contact with the dead.

We may also call our attention to what is related in Numbers 9:6–7:

And there were certain men, who were defiled by the dead body of a man, that they could not keep the Passover on that day; and they came before Moses and before Aaron on that day: And these men said unto him: We were defiled by the dead body of a man: wherefore were we kept back, that we may not offer our offering of the Lord in his appointed season among the children of Israel? . . .

On this the Talmud in B. *Sukkah* 25b asks:

Who were these people who were dealing with a *met mitzvah*, a dead person that no one else was dealing with?

Rashi, ad loc., comments that this was not necessarily a *met mitzvah* (who has a special status), for even if it were their own dead . . . they would have been obligated to deal with them. See the *Torah Temimah* *ibid.* (pp. 109–110 note 4), from whose discussion it emerges that carrying out a relatively minor mitzvah would obviate the carrying out of a more serious one—and in this case, one should nonetheless carry out the minor one. We would add that seeing to the burial of a dead person is seen as an interpersonal mitzvah, and is called by the rabbis *Hessed shel Emet*, true benevolence, in that it is one for which one receives no recompense. Within a person's lifetime he knows that someone will always see to his last rites and burial. Hence, this is a person-directed mitzvah, whereas the sacrifice of the paschal lamb is a God-directed mitzvah; hence, the former overrode the latter.

We may move one stage further, quoting a passage from the *Hidah*, in his book *Yair Ozen*, (Lemberg 1865, 109a):

That which is written in the *Yerushalmi Berakhot* chapter 2 ad fin., and *Shabbat* 1:1, that he who is exempt from something and does it is considered an ignorant person, while in many other cases our decisors said that he who takes upon himself additional stringency, may he be blessed. (See *Shulhan Arukh Orah Hayyim* sect. 639:2, and compare with subsection 7 *ibid.*) One may explain [this difference] by stating that “he is considered ignorant” only with regard mitzvot directed toward his Maker. But there is never an exemption from mitzvot directed toward his fellow humans, for we have been directed in a generic fashion to go beyond the letter of the law, as we learned in B. *Baba Metsia* 30b. . . .

In this way the Hidah resolved a question against the Rambam (*Hilkhot Gezeilah veAvedah* 11:17), who wrote that: “He who goes on the straight and virtuous path and acts beyond the letter of the law, will return a lost object wherever it be, even if this is not in accordance with his dignity.” According to the Hidah, even though this person is not obligated to return the lost object, because it is beneath his dignity to do so, he should nonetheless do so, and is not to be considered an ignorant one, since this is an interpersonal mitzvah.

And this, indeed, is the simple and deep understanding of the statement found in B. *Shabbat* 127a:

R. Yehudah in the name of Rav said: Greater is the hosting of guests than the hosting of the Shekhinah, as it is said (Gen. 18:3), “And he [Abraham] said: My Lord, if now I have found favor in Thy sight, pass not away, I pray thee, from Thy servant.”⁶

Here I would recall the tradition related by R. Yaakov Tavshonsky, in his *Imrei Haskel*, Vilna, 1909, p. 57 (cited in Dov Eliach’s *Avi haYeshivot*, vol. 1, Jerusalem, 1991, pp. 265–266), concerning R. Hayyim of Volozin:

Once R. Hayyim Voloziner, who made it a rule to come regularly to the Bet Midrash at prayer times, was late for prayer. The beadle went to call him to come and found him seated at his table happily in discussion with a group of distinguished guests who had come to visit him. Noting the expression of surprise on the beadle’s face, R. Hayyim explained himself in the form of a question: “Is the issue of the importance of hosting guests, which is said to be greater than hosting the Shekhinah, of little importance in your eyes?!”

I would further suggest that it is this basic principle that is behind the well-known halakhic ruling that the danger to life takes precedence over the laws of Shabbat (B. *Shabbat* 132a), and indeed over other laws of great gravitas (see B. *Yoma* 82a). It is well known that R. Hayyim Brisker took an extreme position of leniency in matters where he saw even a hint of a life-endangering situation. Thus it is related (Aharon Sorasky, *Marbitzei Torah uMusar beYeshivot Nusah Lita miTekufat Volozin veAd Yameinu*, vol. 1, Israel 1976, p. 112) that:

Once a Jew from Brisk came to him with a question: His son, who had been drafted to the army, was sick and in the hospital in the nearby town of Sidlitz. On the following day, which was Shabbat, the doctors would exam-

ine him to decide whether or not he was fit enough to join the army. And so, asked the father, was it permitted for him to travel that night on Shabbat, to Sidlitz in order to intercede on his son's behalf. R. Hayyim did not hesitate for one moment, but ordered the man to do all in his power to save his son, since there was a danger to his life.

The people who were present were puzzled by his unusual ruling, and after the man had left, R. Hayyim explained his response:

If this young man will have to serve five years in the army, it is not unlikely that during this period a war will break out and he will be sent to the front and possibly be killed. And even the slightest suspicion of a life-endangering situation overrules the laws of Shabbat.

R. Hayyim's position on a sick person fasting on Yom haKippurim shows similar concern for human life. Sorasky relates (*ibid.* pp. 112–113) that shortly before his death, R. Hayyim dwelled in Otbosk, a place near Warsaw where people sick with tuberculosis (TB) would come for treatment in the pure fresh air. On Yom haKippurim, twelve days before he died, a woman came to him weeping that her son lay sick with TB in the house next door, in a life-threatening condition, and the doctor forbade him to fast. However, the young man refused to listen to the doctor. R. Hayyim hurried to the young man's house and entreated him to listen to the doctor's directions, but despite his entreaties the young man adamantly refused. Then R. Hayyim said: "If I eat today, will you join me?" The youth replied: "If you eat, I'll eat with you."

Such tales relating to R. Hayyim are legion (see Sorasky, *ibid.*). R. Hayyim was wont to explain his position saying: "I do not rule leniently concerning Yom haKippurim, but stringently concerning the law 'Take ye therefore good heed unto yourselves'" (Deut. 4:15).⁷

Similarly, we can well understand the rabbinic statement that "[so] great is the [need to] respect the dignity of individuals that it has precedence over a negative commandment of biblical authority (B. *Berakhot* 19b, B. *Menahot* 36b, B. *Megillah* 3b, B. *Eruvin* 41b). I have discussed this concept in detail in my *Darkah shel Halakhah*, Jerusalem 2007, pp. 34–43, 67–84, and again in my *Netivot Pesikah*, Jerusalem 2008, pp. 150–159, with numerous examples, a rich bibliography, and a discussion as to the parameters of this principle. An examination of these sources will show that the principle of *Kevod haBeriyot*, the dignity of the individual, takes precedence over mitzvoth between humans and God, so that, for example, if one finds oneself wearing *shaatnez* of rabbinic status, one need not dis-

robe to remove it in a public place, because one's nakedness would be shameful in public (Rambam, *Hilkhoh Kilayim* 70:19).

I would like to show how this was actually practiced by one of the latter-day *Gedolim*, Rav Chaim Soloveitchik, the Brisker Rav. This I learned from an article R. Aharon Hersh Fried, published in *Hakirah* 6, 2008, pp. 49–50:

Late on a Wednesday night, a traveling Jew arrived in Brisk. The lights were out in all the homes, and he did not want to awaken the people with whom he had meant to be staying. Noticing one house in which the lights were still on, he decided to knock on the door and ask whether he could possibly stay the night. The homeowner opened the door and graciously welcomed him to stay the night. The homeowner remarked that coming from the road, the traveler must also be hungry, and went into the kitchen to prepare him something to eat. While the host was in the kitchen, the guest had a chance to look around and he noticed that he was in a house filled with rabbinic books, and quickly surmised that he was in the home of a rav or at least a rabbinic judge. At this point he became uncomfortable with this revered personage preparing a meal for him, and he voiced his protestations, saying to the host, "You needn't trouble yourself." The host did not answer him, continued preparing the meal, and served it to him, amidst his continued protestations. The host then began to prepare a bed for the guest, who again protested, "You needn't trouble yourself. Just put the bedding down and I'll arrange the bed myself. Please, you needn't trouble yourself." Again, the host did not answer, but continued to make the bed. The next morning, the host took the man to synagogue. Being that it was Thursday morning and there was a public Torah reading, the host told the gabbai to give the guest the honor of lifting the Torah scroll. As the guest was about to lift the Sefer Torah, Rav Chaim (who was the host) tapped him on the shoulder and said, "You needn't trouble yourself."

The author writes of Rav Chaim that his "greatness in *hessed* was possibly even greater than his greatness in learning," and that this anecdote encapsulates the point beautifully.

This general thesis is reflected in yet a different halakhic area. The *Sheiltot* (to *Terumah*, *Sheilta* 62) writes:

The house of Israel is obligated to give charity from their monies to whosoever is in need thereof. And he who shows pity for the impoverished is likened by the Holy One blessed be He as if he did good deeds to God himself, as it is stated, (Exodus 25:2), "that they should bring to Me an offer-

ing,” (i.e. if they give charity to the poor, it is as though they are giving it to God himself).

In B. *Baba Batra* 10a we read in the name of R. Yohanan:

What is the meaning of the verse in Proverbs 19:17, “He who hath pity upon the poor lendeth unto the Lord”? If it were not written, it would be impossible to say it, namely that “the borrower is servant to the lender” (ibid. 22:7).

Rashi explains that he who has pity for the poor, it is as though he is lending to God, and “the borrower”—God—becomes, as it were, “servant to the lender.”

The Netziv, returning to the *Sheiltot* (in his *Haamek Sheelah* p. 413) notes that the author of the *Sheiltot* derived his ruling from a biblical verse relating to donations made to the tabernacle, and nonetheless, he learned from it that charity given to the poor is of greater virtue than money given to the Temple itself.

Furthermore, this is also the view of the Tosafot in B. *Baba Batra* 9a, who learn this from Rav Asi’s statement *ibid.*, that: “Charity may be weighed against all other mitzvot, as it is said (Nehemiah 10:33), ‘Also we made ordinances (mitzvot) for us to charge ourselves yearly with the third of a shekel for the service of the house of our God.’” Even though this verse is talking of money for the Temple, Rav Asi learned from it—and from the plural “mitzvot” that charity is even weightier than donations to the Temple.

This triggered a discussion among the decisors, summarized in *Shulhan Arukh Yoreh Deah* 249:16:

There is an opinion that the mitzvah [to give to] the synagogue is greater than the mitzvah of charity, and the mitzvah of charity to youths or to the sick is greater than that of the synagogue. (*Mahri Kolon, Shoresh* 128, in the name of the *Tashbetz* in the name of the Rosh to Yerushalmi *Zeraim*).

But the Gaon of Vilna (252:2) stated explicitly that charity is greater than the building of a synagogue.

This also seems to be reflected in a passage in *Pesikta Rabbati* chapter 6, (25b), where the question is raised: Why did Solomon not build the Temple with his father David’s treasures? For the verse in 1 Kings 1:51 states:

“So was ended all the works that King Solomon made for the house of the Lord. And Solomon brought in the things which David his father had dedicated: even the silver, and the gold, and the vessels, did he put among the treasures of the house of the Lord.” There are those who explain this . . . negatively. . . . For there was a famine in the days of David for three years, and David had several treasure houses of silver and gold that had been dedicated to the building of the Temple. And he should have used them to save lives, and he did not do so. God said to him: My children are dying of starvation and you are hoarding money to build a Temple. Should you not have [used it to] save lives? Since you did not do so, by your life, your son Solomon will make no use of it [when building the Temple]. . . .

Hence the verse states that only when “was ended all the works” did Solomon bring these treasures to the house of God. So charity, and certainly saving the lives of the hungry, have greater priority even than building God’s Temple.

In Yerushalmi *Shekalim* chapter 2 ad fin., we read that “Rabbi Avin (=Avin) made these gates “for the great synagogue (in Tiberias). “Rabbi Mana (mid-fourth century C.E.) came to him, and he said (boastingly): “See what I have done.” To which Rabbi Mana responded by quoting the verse in Hosea 8:14: “For Israel hath forgotten his Maker, and buildeth Temples. . . .” Are there no [poor] people who are studying Torah?” The *Tashbetz* has an additional reading: “Or sick people who lie among the rubbish.” The *Korban haEdah* further elaborates: He should have used his money to help people’s livelihood. . . . It would be better to give to poor Torah scholars who are involved in mitzvot at all times than building edifices. The Rambam summarizes in *Hilkhot Matnot Aniyim* 1:2:

One is obligated to be more careful with the mitzvah of charity more than all other mitzvot, for charity—*tsedakah*—is a sign of the righteousness—*tsedek*—of the offspring of Abraham our forefather.

In view of all that has been said above, it is surely clear that charity, as an interpersonal mitzvah, must be seen as preferential to building a synagogue or even the Temple, which is a mitzvah between humans and God.

We have discussed rather extensively the premise that people-directed mitzvot have a preferential status over God-directed mitzvot. And this view may be found among numerous authorities, as referred to in *S’dei Hemed* vol. 3. pp. 164–177, where the issue is dealt with at length and in depth.

Perhaps we can link this with an interesting observation made by R. Yosef Hayyim Sofer (in his *Menuhat Shalom*. Part II, Jerusalem 2003, p. 22):

It is very clear that the Tanna of [Mishnah] *Peah* 1:1, who listed “those things that a person eats their fruits in this world . . .,” only listed those acts that serve well both to God and to humans, where human beings also have real material benefit therefrom, such as honoring one’s parents, righteous deeds to one’s fellows; while those [mitzvot] that are only good toward heaven, such as sending away the mother bird, are not listed.

He bases his comments on the passage in B. *Kiddushin* 40a, which elaborates on the verse in Isaiah 3:10, “Say to the righteous, that it shall be well with him: for they shall eat the fruits of their doings.” The Talmud homiletically understood the verse to mean “Say to the righteous for [he is] good,” and then asks:

And is there a righteous person who is not good? This means he is good toward heaven and good to humankind—this is a good and righteous person. Good to heaven and bad to humankind—this is a righteous person who is not good. And so similarly you may say [on the verse 11 *ibid.*]: “Woe unto the wicked! It shall be ill with him: for the reward of his hands shall be given him.” And is there a wicked man who is bad, and one who is wicked and not bad? Yes, if he is bad toward heaven and toward humans, this is a bad wicked person. But if he is bad toward heaven but good toward humans, then he is a wicked person who is not bad.

So here again we see that a greater preference given to one who is virtuous both to God and humankind, the inference being that piety toward God alone is not sufficient, and makes for a righteous person who is nonetheless considered “not good.”

Indeed, this concept, of a righteous person who is not necessarily good, is found in the Netziv’s introduction (*Petiha*) to Genesis. There he writes that:

There were *Tsaddikim* and *Hassidim*, righteous and virtuous men, who toiled in the learning of Torah, but who had no integrity in the ways of the world. . . . And the Holy One blessed be He, who is integrity personified, cannot bear righteous people of this nature, but only those who walk the paths of integrity in the ways of the world, and not in a distorted manner. . . .

Admittedly, here we do not clearly see the relative weight of the two categories, but this aspect of the issue has been discussed above. (See further the discussion of R. Aharon Lichtenstein, in his *By His Light: Character and Values in the service of God*, adapted by R. Reuven Ziegler, Yeshivat Har Etzion 2002, pp. 113–118, section entitled “*Frumkeit* Devoid of Goodness.”)

Many years ago, when my late father of blessed memory was in a hospital, recovering from an operation, he shared a room with an elderly gentleman who had had a stroke and could no longer speak. This man could only make unintelligible noises. His wife and children took turns sitting by his bed, and as I also spent many hours with my father, we got to talking to one another. His wife told me that she had married at the age of fourteen, and that her husband was considerably older than she. She had brought up the family, supported it by working as a maid in various houses, while her husband sat and learned Torah. He would get up at about 3:30 in the morning,⁸ go to the synagogue, sit in his corner and learn all day, interrupting only for the prayers. After *Shaharit*, the members of the synagogue would give him some breakfast, and at midday his wife, or a child, would bring him some lunch. In the evening he would come home, and his wife would give him supper, and he would go to bed early, so as to be able to get up at 3:30. He never gave a lesson in the synagogue, nor even a sermon; in fact he never talked to the other congregants; he just sat in his corner and studied. He never taught his children, and no one really knew what he was studying or how much he really knew. And now he was incapable of speaking, or even communicating in an understandable fashion, so that his “Torah” could serve no others. The members of the synagogue held him in awe as a supremely righteous person; his family held him in great respect. But I remember wondering all the while, and being not a little troubled by my thoughts, that perhaps he was a righteous man who, in fact, was not good; and that it was his wife, an illiterate woman, who had shouldered the burden of educating and maintaining the whole family for so many years, who was really the righteous person, righteous and good!

It is interesting to note what Rashi writes in his commentary to the book of Leviticus. This book, as is well known, deals to a large extent with ritual laws, i.e., with laws relating to the relationship between humans and God—and indeed begins with them. The first verse in this book reads as follows:

And the Lord called unto Moses, and spake unto him out of the tabernacle of the congregation, saying

On these first words “And [the Lord] called unto Moses,” Rashi comments as follows:

All oral communications of the Lord to Moses, whether they are introduced by *dabber* or by *emor* or by *tsav*, were preceded by a call (to prepare him for the forthcoming address). It is a way of expressing affection, the mode used by the ministering angels when addressing each other, as is said, “And one called unto another [and said holy, holy, holy is the Lord of hosts]” (Isaiah 6:3). . . .⁹

Rashi is teaching us, basing himself on the Sifra ad loc., that before one begins to shower a spate of commandments (upon a community or an individual), one must prepare the recipient with words of affection.

It is surely significant that Rashi begins his commentary on this book of ritual with words of advice on matters of etiquette and decent behavior toward one’s fellow man.

And from these same initial words of that verse, the Talmud in B. *Yoma* 4b comments as follows:

Tanya: Why did God “call” before he “spoke”? The Torah teaches us good behavior, that a person should not speak to his neighbor without first calling (i.e., preparing) him.

The *Torah Temimah* ad loc. elaborates as follows:

The reason for this is so that the audience can prepare itself to listen [to the commandments]. And this is similar to what we have learned from B. *Nidah* 16b, that the Holy One blessed be He hates a person who enters his neighbor’s house suddenly (i.e., without knocking). And in Tractate *Derekh Erets* [Rabba] chapter 5 we read: And all people should learn good behavior from God, who stood at the gate of the garden (of Eden) and called unto Adam, as it is said, “And the Lord God called unto Adam and said unto him, where art thou?” (Genesis 3:9). And the reason that our Gemara (in *Yoma*) did not cite that verse, may be explained as follows: to teach us an additional lesson, that even in the case of one who one knows intimately and loves with a deep love, even so one should not speak to him suddenly. And it is for this reason that [the Talmud] brought its proof from Moses, concerning whom God himself testified,” [My servant Moses is not so], who is faithful in all Mine home. With him I speak mouth to mouth, even apparently, and not in

dark speeches . . . ” (Numbers 12:7–8)—And even so God prepared him before he actually spoke with him, (and gave him commandments).

Here too, the Talmud teaches us lessons in decency and good behavior from the first words in the book of Leviticus. Perhaps this is yet another indication that proper behavior takes precedence to Torah. As R. Yishmael ben R. Nahman said: *Derekh erets* came 26 generations before Torah (Leviticus Rabbah 9:3, ed. Margalioth p. 179).

Let us recall the words of the Maharal of Prague, in his *Netivot Olam, Netiv Derekh Erets*:

Therefore, a person should not view lightly those matters that are *derekh erets*, for *derekh erets* came before Torah . . . and it is impossible to read a Torah situation without *derekh erets*, as they said, “If there is no *derekh erets* there is no Torah” (Avot 3:17), for *derekh erets* is the basis of Torah which is the way of the Tree of Life.

To this we may add the remarkable statement of R. Simlai in B. *Sota* 14a:

The Torah begins with an act of kindness, and ends with an act of kindness. It begins with an act of kindness, as it is written, “Unto Adam also and to his wife did the Lord God make coats of skins, and clothed them” (Genesis 3:21). And it ends with an act of kindness, as it is written, “And He buried him [i.e., Moses] in a valley. . .” (Deuteronomy 34:6).¹⁰

Elsewhere, I have elaborated on this theme, and brought additional sources to underscore my premise, and to show how it is borne out in a variety of halakhic contexts.¹¹



How do these ideas translate themselves into everyday life, and what may we learn from the behavior of pious sages of bygone years, who may serve as role models for us in the present day?

We already related an anecdote about Reb Chaim Brisker. We shall now continue by quoting a passage from Rabbi Yehudah Leib Maimon’s *Sarei haMeah*, vol. 2, Jerusalem, 1961, pp. 272–273:

It once happened that Reb Yisrael Salanter, during his stay in Kovno, lived for a while in the house of a wealthy pious man, Reb Yaakov Karpas, and would dine at his table. Members of the household noted that when he

washed his hands before the meal, he would do so with a minimal amount of water, even though a bucket full of water was prepared for him. They wondered in amazement: Should not a tsaddik like Reb Yisrael rule more stringently (mehadrin) to wash his hands with a plentiful amount of water! They went and spoke to Reb Karpas, who examined the matter and found that indeed Reb Yisrael would wash his hands with no more than a reviiit haLog and no more. He too was most surprised, and when they sat together at a meal, he asked Reb Yisrael: “Forgive me, our Master, but this is a matter of Torah and I must learn about it. Why then does it suffice you to wash your hands with a reviiit? Surely, it is a clear ruling in the *Shulhan Arukh* (*Orah Hayyim* 155:10), “even though the amount (for hand-washing) is a reviiit, one should wash more plentifully.” Why then do you, sir, not do so?”

Reb Yisrael answered as follows: “I have seen that the maid brings the water from afar, from a well in the valley. Your house is situated high on the hill, and the maid almost collapses under the weight of her burden. *And it is forbidden for a person to be overly religious at the expense of others*” (emphasis added).

Indeed Reb Yisrael was wont to say:

“At times, out of excessive zeal to carry out a mitzvah between a person and his Maker, people err and transgress a much more serious interpersonal mitzvah, as for example is the case of the days of *Selihot*: If someone rises very early to recite the *Selihot* in the synagogue, and in doing so causes discomfort to the maid in his house, who, generally speaking, is a poor orphan girl who hires herself out to serve in the house of strangers, and she has to get up early in order to prepare a hot drink in the morning, then the sin of “distressing an orphan” outweighs all the mitzvah of reciting the *Selihot*. . . .”

Indeed, in his own synagogue, he ruled that the Friday-night and festival services should begin early, even before the true time of reading the *Shema*, justifying this as follows:

The maid in your house, just as other women, are not obliged to say the *Shema*, but they are obligated to hear the *Kiddush*, (see B. *Berakhot* 20ab), and they will not eat until they have partaken of the *Kiddush* wine. Therefore, one should not take the stringent position to recite the *Shema* at the right time, thereby causing distress to the maid, who after a long day's work with much toil in preparing for Shabbat, waits eagerly to eat and satisfy her hunger.

In this context, it is worth retelling what I saw related in the Newspaper *BeSheva*, for Hannukah 2008: A group of yeshiva students

came to Rav Steinman and asked him whether it was right that they should take the strict path of eating their meals on Hannukah in their dormitory rooms, so that the place they lit their candles would also be the place of their meals. His reply was that they do not need to do so, for their eating outside of the yeshiva cafeteria would create additional work for the yeshiva's kitchen staff. Their counter-claim was that they would use disposable dishes which they themselves would clear and clean up after their meals. But he answered that "One cannot rely on the boys to clear away the food," and, therefore, if their eating in their rooms would cause extra work for the kitchen staff, it would be better for them not to take the stringent path.

Yet another wonderful testimony about that great Torah luminary and paragon of true piety, from Rabbi Dov Katz's *Rabbi Yisrael Salanter*, Jerusalem 1975. pp. 45–46:

While he was living in Salant, it once happened that Reb Yisrael did not appear in the synagogue on Yom haKippurim night. The congregation waited for the *Kol Nidrei* prayer, and after a while they again waited for the *Maariv* service. They looked for him in his house; they sent out people to search for him throughout the town, but they could not find him. People were greatly surprised, and the congregation in the synagogue began to be worried about him.

After they finished citing all the *piyyutim* and were about to end the *Maariv* service, he suddenly appeared. . . . He wrapped himself in his *tallit* and began to pray. After he finished praying, he related innocently that on his way to the synagogue he heard a child crying. When he entered the house from which the crying was heard, he found a baby, some two months old, lying in a cradle and weeping. Next to the baby was a bottle of milk. By the baby on the bed slept a young girl of about six. He understood that the baby's mother had wished to go to hear the *Kol Nidrei* prayer and had prepared milk for her infant, whom she left under the care of his sister (who had fallen asleep and did not hear the baby's cries). Reb Yisrael took the bottle, fed the baby and put it to sleep, and afterward woke up the sister, so he could leave for the synagogue. But the young girl entreated him not to leave her, for she was afraid to remain alone. So he agreed, and stayed with her until her mother came back from the synagogue, and then left them and went to pray.

After Reb Yisrael finished his story, he expressed great joy that on this holy night he was privileged to carry out a great mitzvah of benevolence toward these children. Reb Yisrael regarded the act of benevolence as a

means to cling to the ways of God, who is “abundant in goodness” [Exod. 34:6], and we have been commanded to walk in his ways: “Just as He does deeds of benevolence, so too must you do deeds of benevolence.”

We see then how Reb Yisrael’s extreme sensitivity to the needs of the poor, the orphan maids, and small children, overrode any ritual requirement of a more complete nature, and any more stringent attachment to halakhic requirements. The needs of his fellow creatures were far more committal to him than those of his Maker.

Similar such stories are legion, and we could fill many folios with such *maasei hessed*. However, I believe the above will suffice to make our point clear and meaningful.

• • •

Earlier, I referred to an article published in *Hakirah* by R. Aharon Hersh Fried, entitled “Is there a Disconnect between Torah Learning and Torah Living?” He argues persuasively that in our education a greater stress must be put on interpersonal mitzvot. On pp. 48–49 he writes:

The *Sefer HaBerit* [part 2, section 13, chapter 3] too, writes that “the love of friends and the mitzvot and behaviors between man and his neighbor are the main facets of the “holy path” and the foundation of the entire Holy Torah.

The Alshekh [*Sefer Torat Mosheh*, *Shemot* chapter 19, verses 1–2] writes similarly that the reason the High Court, the Sanhedrin, had its seat in the Bet HaMikdash, close to the *mizbeah* (altar), was to show that in Hashem’s eyes the *mizbeah*, which represents the peace between God and man, and the Sanhedrin, which represents the law bringing peace between a person and his fellow, were both equal.

He continues in this vein, as follows:

The words of the Rishonim and the *sifrei mussar* are thus clear. . . . Unfortunately, they receive little “press” in our homes and/or our schools. Thus, as far as our children are concerned, being nice and being *frum* are not related.

In some circles I have heard it said that “there is too much talk about *ahavat yisrael*, and they suggest that those who talk about *ahavat yisrael* and interpersonal mitzvot are being motivated by secular humanism rather than Torah. This is a sure way to kill the message. It also places those who

advocate doing more about *middot* on the defensive. The bizarre and twisted message becomes that the true Haredi and the true Torah Jew are not overly concerned about *middot* and interpersonal mitzvot.

In seeking to explain this phenomenon, he directs our attention (pp. 44–45) to an article by Reb Shlomoh Wolbe, published in *haBe'er* 15, 1977, which he calls “a shmuess.” The article is entitled “On *Frumkeit*”:

In this *shmuess* he puts forth the thesis that there is a basic instinct, inborn in all creatures, each according to its level of soul, to be “*frum*,” i.e., to want to come close to one’s Creator. *Frumkeit* is not fear of heaven, it is not a quality of piety, nor is it punctiliousness in observing mitzvot. It is simply an instinct, and like all instincts it is egotistical, i.e., concerned only with its own satisfaction, unthinking, and given to satisfaction through fantasy. The satisfaction of this instinctual drive, he writes, serves as the force behind many people’s mitzvah activities, and in a positive way, serves to help us carry out mitzvot in spite of hardships. However, because of its egotistical and unthinking nature, one cannot build one’s service to Hashem on this instinct. The *frum* instinct, no less than any other instinct, must be harnessed, and must be guided by rational thought, i.e., by Torah knowledge and halakha. If not, it will seek satisfaction in inappropriate ways. A person driven by the need to satisfy this instinct will engage in activities that he imagines will lead to a “spiritual high,” even if in the process he transgresses very real Torah prohibitions. He will push his way through a throng in a *shul* to get close to a visiting *tsaddik*, pushing one person, jabbing another, and tearing off a button from a third person’s jacket, all in the pursuit of attaining imagined proximity to holiness, i.e., attaining a *frum* “high.” He does not consider that his violation of interpersonal mitzvot may remove him from holiness. Nor does the performance of interpersonal mitzvot attract him; it does not make him feel more spiritual or holy, it does not satisfy his instinctual need for a *frum* “high.”

He summarizes as follows:

Yes, this is an age-old, deeply ingrained and intractable problem, but we cannot declare ourselves free of the obligation of trying to tackle it and change it. If we don’t, we will not succeed in changing the attitudes and behaviors of our children in the area of interpersonal mitzvot. The only way we can do this is by concerted and unrelenting educational programs aimed at the entire community. Parents need to learn the sources with their children, teachers with students, *rabbanim* with their congregants, and each one of us with our *havrutot* and friends.

I believe that our message must be clear and unambiguous. We must lay a far greater emphasis on our norms of social behavior—not for humanistic reasons—but out of the true understanding of halakha. Our piety and “*frumkeit*” should be directed toward our fellow human beings, and our piety cannot be limited to our ritual behavior alone.

NOTES

1. In *Yoma*, *ibid.* we find the following statement:

Sins between man and his Maker—Yom haKippurim atones; sins between man and his fellow—Yom haKippurim does not atone until he appeases his fellow. This is what R. Eleazar ben Azariah taught: “that ye be clean from all your sins before the Lord” (Leviticus 16:30)—sins between man and his Maker Yom haKippurim atones; sins between man and his fellow Yom haKippurim does not atone until he appeases his fellow. Said R. Akiva: Blessed are you, Israel, before whom do you purify yourself and who purifies you? Your father in Heaven.

And in *Numbers Rabbah*, *ibid.* we read:

R. Akiva said: One that says “and that will clear [the guilty],” and another text says “that will by no means clear [the guilty], (Exodus 34:7; Numbers 14:18)! But [the meaning is that] something between you and your Maker “will clear,” and something between you and your fellow “will by no means clear” . . .

2. There is a well-known controversy among the later authorities whether according to R. Eleazar ben Azariah sins between man and his fellow where there was no appeasement also present the atonement of sins between man his Maker. This is the view of R. Yishayah Pinto in his commentary to R. Isaac Alfasi (the *Rif*) apud the *Ein Yaakov*, and so too R. Hayyim Palache (in *Birkat Moadim leHayyim*), and Yaavetz, in a responsum *Shetei haLehem* sect. 31). On the other hand, the *Hidah*, in *Birkei Yosef*, is of the opposite opinion. See R. Yosef Engel’s note to *Yoma* *ibid.*, *Peri Hadash* sect. 606:1, *Shoel uMeshiv Reviata*, vol. 3, sect. 64; Responso *Yehaveh Daat*, by R. Ovadiah Yosef, vol. 5, sect. 44.
3. On this halakhic concept, see what I wrote in *Darkah shel Halakhah*, pp. 117–118, 140–141, 175–177; *Minhagei Yisrael* vol. 3, Jerusalem 1994, pp. 53–54; *idem* vol. 8, Jerusalem 2007 p. 263; *Entzaiklopedia Talmudit*, vol. 10, Jerusalem 1961, 32–41.
4. See further Tamari, *Kesef Kasher: Sugyot Mussar beMishar*, Jerusalem 2005, pp. 49–50; Edward Zipperstein, *Business Ethics in Jewish Law*, New York 1983, pp. 49–53.
5. On the status of *met mitzvah* see what I wrote in my commentary to *Derekh Erets Zuta*, 5–8, Ramat-Gan 1990, pp. 179–182.
6. And see what my father, Rabbi Samuel Sperber, wrote on this in his

- Maamarot*, Jerusalem, 1978, pp. 189–191.
7. As to the inner-halakhic logic of this position, it was explained by his son R. Velvele, as related by R. Shlomo Yosef Zevin, in his *Ishim veShitot*, third edition, Tel Aviv 1966, p. 64). And see further the response of the Radbaz, no. 287.
 8. I might here remark that my grandfather, Rabbi David Sperber, of blessed memory, used to get up every night at about three in the morning to begin learning. This was in accordance with the kabbalistic view that at the middle of the night, when the sun begins to come close to sunrise, that is the time when the attribute of Mercy comes into force (the Arizal, cited in *Shaar haMitzvot, Elhanan, Birkei Yosef Orah Hayyim* 236:1, based on Zohar, Hayyei Sarah 13:26).
 9. Rosenbaum and Silbermann translation; see also their note 1, in the Appendix on p. 136.
 10. And see what I wrote on this in my *Darkah shel Halakhah*, Jerusalem, 2007, p. 62 note 78, 79.
 11. For those readers who may wish to delve more deeply into this sugya, I would refer them to my book, *Netivot Pesikah*, Jerusalem, 2008, pp. 181–192, where I dedicated a special appendix to this subject.

On the Need for an Ethical Preparatory Torah Education

ZECHARYAH TZVI GOLDMAN

(Rabbi Zecharyah Tzvi Goldman is the Founder and Rabbinic Administrator of the EarthKosher Kosher Certification Agency. He also is the Founder and Educational Director of the Institute for Halakhic Conversion.)

Rabbi Abraham Isaac Kook wrote: “The wise do not complain of darkness; rather they increase the light.” The Orthodox and greater Jewish community seem racked by scandal after scandal where laypeople, political leaders, and rabbis are demonstrating what can be termed “ethicopathy”—extreme disregard for ethical living and consciousness. While it may be instinctive to invoke the aphorism that there is always a bad apple in every bunch, I believe this would not do justice to what I sense is a systemic and communal responsibility in how we are educating our children, adults, and rabbis. As a member of the Orthodox community, my focus will be on my own religious community with which I am most familiar, and which sadly seems as of late quite efficient in producing ethicopaths of the first order.

Allow me to begin with a seemingly ridiculous question: “Does the Orthodox community care about ethical living?” As an Orthodox rabbi I would immediately reply, “Of course we do—what an absurd question! Look at all the commandments that touch on ethical living. Look at all the statements of our talmudic sages that emphasize the importance of ethics in business and in one’s personal dealings. Look at all the stories of the righteous, past and present, and the behavior they have modeled for generation after generation. And look at the contemporary books on Jewish

ethics available at Judaica stores.” Clearly, everything in the above statement is true. However, let me refine the question: I mean to ask: “Do we ‘emphasize’ and ‘prioritize’ ethical living in the education of our children, adults, and rabbis?” Now to this question the rebuttal does not come so simply. When I consider what the Orthodox community “emphasizes” and “prioritizes,” ethical living does not immediately appear to register as very high on the totem pole of concerns. The emphasis of our community seems to be: Daf Yomi, daily minyan, Shabbat, kashruth, *berakhot*, *mikvah*, *eruv*, theology, holidays, *tseniyut*, conversion, Carlebach davening, and Israel. Our children spend the vast majority of their sacred studies school time focused on classical text study of Bible, Talmud, and halakha, with a dose of Hebrew Language and Zionsim within the Modern Orthodox schools.

A little voice inside me says: “I know this may not sound as though we emphasize and prioritize ethics, but ethical concepts inform all the Torah we are studying.” This answer, albeit sincere, is what I will call the theory of ethical development through “osmosis.” This approach was once marshaled against Rabbi Yisrael Salanter, the founder of the nineteenth-century Mussar movement, who attempted with limited success to instill a particular focus on psychological awareness and ethical cultivation within the traditional yeshiva system. His rabbinic opponents then and now argued that Torah alone sufficed, and there was no special need to “waste time” from Torah study for Mussar. His response was that while a spiritual diet of Torah alone may have sufficed for prior generations, this was no longer true today! If we fast-forward to the early twenty-first century and we survey our receding moral landscape, let us ask some very simple questions: Is there any Orthodox high school (no matter how “left” or “right”) that offers its students a six-month class, one hour a week in “Ethical Living in the Modern World”? Are any of our rabbinical seminaries from the left to right preparing our rabbis to deal with the ethical and psychological challenges they will face in their professional capacities as teachers, counselors, mentors, and fundraisers? Are our synagogues educating and supporting our adults in a systemic and committed manner to lead ethical lives in the workplace and at home?

I believe the answer to these questions are: There are few, if any, high-school programs within Orthodoxy focusing on ethical living in a modern context according to Torah. To the extent that rabbis are being prepared for the ethical and psychological challenges of the rabbinate, this is at best

limited to Modern Orthodox seminaries such as Yeshiva University and Yeshivat Chovevei Torah. Adults are offered sporadic and limited programming with rabbis poorly prepared to even address these issues by their respective rabbinic seminaries.

So if we are operating on an ethics-by-osmosis educational theory, we should not be surprised that some individuals—even rabbis—have less ability to develop into ethical human beings via this method. This results in the outrageous moral scandals and immoral wonders of the rabbinic world that we read about in the newspaper—to our shock, indignation, and horror. Alternatively, and what is more often the case, these ethical failings are kept under wraps or are simply unknown until a catastrophe occurs. Then we all lament the gross desecration of God’s name for a week and then go back to “Torah life as usual” until the cycle repeats and the next ethicopath surfaces in the headlines. We can only break this cycle if we focus on both psychological awareness and ethical cultivation as a fundamental part of our schooling. We are not doing this. We are placing our emphasis on teaching limited and narrow portions of Tanakh, Mishna, Talmud, and halakha—the halakhic portion of which mostly revolves around the holidays, Shabbat, prayer, and daily ritual life. In the Modern Orthodox community we also emphasize that our children learn Modern Hebrew and get a college-preparatory education.

One could argue that ethics should be taught at home. This is, of course, true. But it isn’t sufficient. We need our schools to imbue students with a proper ethical education. Ethical living involves the application of *middot* in highly charged real-life contexts that transcend being nice to one’s classmates and not speaking Lashon Hara. Additionally, I do not believe that most schools really make *middot* a true focus. Have you ever seen a report card that gave marks for: kindness, humility, gratitude, modesty, forgiveness, thoughtfulness, self-reflection, and ability to acknowledge mistakes? Is there a period in our Torah-study curriculum focused on Character Development? Is there a real curriculum? What training have the teachers received in character development that would make them qualified to teach this subject? Are there *Middot* Clubs? Rather, *middot* are a side dish for the “meat, bread, and potatoes” and is typically given tangential emphasis with a little story sent home in the bulletin or a tidbit of a story shared in class. Usually “*middot*” only becomes a focus when a child has real behavioral problems.

It would be quite wrong to presume that holiness, devotional piety, Torah knowledge, and observance of ritual law are identical with, or somehow perform lead to, ethical behavior. In reality, holiness, devotional piety, Torah knowledge, and observance of ritual law can mislead a person into believing that he or she is beyond the need for ethical behavior! Additionally, the analytic and highly complex interpretive methodologies one is trained in, the rabbinic legal fictions one is exposed to and the endless divergence of opinions and divergences of opinions built on divergences of opinions can be enlisted to rationalize unethical behavior. The tradition itself points out these concerns: “Once (Torah) wisdom enters a person cunning enters within him” (*Sotah* 21b). The sages warned against becoming a “pervert with permission of the Torah” (Ramban on *Parashat Kedoshim* 19:2). They also shared with us a story of two *kohanim* (the embodiments of holiness) racing up the altar (the embodiment of divine service) so that they could be first to perform the initial Temple service of the day. What is the result of these holy aspirants’ eagerness to express their religious devotion? One kohen stabs and kills the other! (The embodiment of a lack of ethics). Then the top concern of the *kohanim* becomes preserving the ritual purity of the knife! (embodiment of observance of ritual law). This *aggada* is teaching us explicitly what distorted religious priorities and values look like. It is teaching us that holiness is not identical with ethics, and that observance of ritual law can be a distraction from ethical sensitivity. Presumably, the *kohanim* were too busy studying the Laws of the Temple and its sacrifices and the laws of purity and impurity to learn how to deal with their basic humanity! This *aggada* brings to mind the words of the German writer Johan Wolfgang von Goethe, “Everything that emancipates the spirit without giving us control over ourselves is harmful” (*Proverbs in Prose*). The rabbis in the Talmud say that “The purity of ritual vessels was more important to them than murder!” (*Yoma* 23a). There is a reason our rabbis tell us these stories and teachings—yet do we really collectively take them in? Do we allow them to change how we are educating? Or like the German philosopher Georg Wilhelm Freidrich Hegel stated, “What experience and history teach is this—that people and governments never have learned anything from history, or acted on principles deduced from it” (*Philosophy of History* [1832], introduction).

What would an ethical preparatory Torah curriculum look like for a Torah high school? I will share a few ideas with the disclaimer that we

have many great and creative Torah educators, and if they put their minds to it, I am sure it will be the finest program in the world. For high school students, the course should include a combination of case study and text study using a multimedia approach incorporating news articles, TV clips, and documentaries. We take a case of a person who violated a Torah ethic and we examine how this played out. What was his life like before and after? What were the likely motivations for doing this? How did this unethical behavior impact on others and their families? After having this real-life exposure to a practical expression of unethical living and the ensuing disaster, we examine classical Torah texts on these ethical and psychological issues. This could then generate class discussion and creative writing assignments with an emphasis on how students would deal with ethical challenges. The class might make a visit to a minimum security prison and meet with some of the Jewish inmates and have a frank discussion with them. Various communal professionals could be invited to class to share how they have been challenged ethically in their professional lives and how they have navigated these challenges. The core Torah curriculum itself can be taught in a way that emphasizes the ethical insights, fundamentals, and applications of what is being learned. This course, if done correctly, would be the most interesting and memorable course in Torah our students ever had!

In regard to training rabbis, two things are necessary and easily doable. First, rabbis should undergo at least two years of individual or group psychotherapy to become “more aware of themselves.” It is very unwise to create rabbis who know the rabbinic tradition far more than they know themselves. The depth of one’s talmudic or halakhic learning will not directly help a rabbi in certain trials, whereas knowing one’s underlying motivations, typical defense mechanisms, and character weaknesses will. In addition, rabbinical students should be presented with lessons on how some rabbis have failed morally. These moral lapses should be dissected psychologically and halakhically.

Rabbis who molest children, who are sexually promiscuous with their congregants or students, who embezzle charity funds—these are highly complex, distorted, and struggling souls. They may be brilliant, charismatic, articulate, and highly motivated to learn, teach, lead, and change the world; yet, they have moral shortcomings. If lawyers, medical doctors, psychologists, and accountants must study the ethical issues that they will

face, should not we also expect this of rabbis? Yet, few yeshivot outside Modern Orthodoxy do anything sophisticated and thorough to prepare rabbis for these ethical conflicts and challenges.

What about adult education for laypeople? Can we really imagine that the Orthodox community makes this a top priority? A synagogue rabbi may give a class or series of classes on Business Ethics that is sparsely attended or may share an ethical insight on the weekly Torah portion in his weekly sermon; but this surely is not adequate.

There is a synagogue in New York that is so committed to having a holy atmosphere that it fosters concentration during the prayers; membership in that congregation is dependent on not talking inappropriately during prayers. They even have this as part of a written membership agreement. This is what I consider the prioritization of a value. Would it really be so brazen and alarmist to suggest that Orthodox synagogues make their membership conditional not just on the understandable payment of dues and the contribution to the building fund but that it should also include mandatory attendance for all adults at a seminar on Torah ethics? When I considered this seemingly “radical” proposal, I asked myself how I would feel if I got a letter from my synagogue that said, “Dear Member, in view of the tragic and outrageous moral scandals that have racked the Jewish community recently, we seek to prevent the further desecration of God’s name that these moral offenses engender. We seek to sanctify God’s name by making it clear to the Jewish community and the world community the esteemed and non-negotiable stance that we place not just on the observance of the ritual laws of the holy Torah but equally on the observance of the ethical laws in our Holy Torah. To this end our rabbinic committee has established a requirement for membership in our synagogue that all adult members annually attend a one-day learning seminar devoted to “Torah Ethics in a Modern World,” which will be offered quarterly by our esteemed rabbi. Thank you in advance for your understanding and participation.” How would I feel? I would feel absolutely proud!

This one-day course could be designed by a working group of Torah scholars, business professionals, and psychologists. Progressive institutions within Orthodoxy could facilitate the development of such a curriculum and this could be sent to synagogue and rabbinic organizations for circulation among their members.

If we are serious about not producing ethicopaths who defraud, steal, molest, abuse their power, show disregard for human dignity—then we must evolve beyond the educational theory of ethics by “osmosis” to the educational theory of ethics by “active prioritization.” In the words of the English philosopher John Locke, “The only fence against the world is a thorough knowledge of it” (*Some Thoughts Concerning Education*, 88). We need to initiate an ethical renewal within Orthodoxy. If the first question we are asked when we encounter the heavenly tribunal is: “Did you conduct yourselves honestly and faithfully in your business dealings?” (*Shabbat 31a*), then there must be a curriculum to help us learn how to answer this question properly.

Being a light unto the nations and a holy people is quite a challenge. It is imperative that we be ethically focused. This essay is a modest call to that sacred end.

Mussar: A Jewish Psychoethical Model for Our Time

MEL GOTTLIEB

(Rabbi Mel Gottlieb, PhD, is President of the Academy for Jewish Religion, California, and the Dean of its Rabbinical and Chaplaincy programs. He teaches a variety of courses including Kabbala, Hassidic Commentaries, Spiritual Dimensions of Biblical Texts, the Wisdom of the Zohar, Rav Kook, and the Mussar Psychoethical Masters.)

God sent the fiery serpents against the people and they bit the people. . . .

God said to Moses: "Make yourself a fiery serpent and place it on a pole, and it will be that anyone who was bitten will look at it and live."

Moses made a serpent of copper and placed it on the pole; so that if the serpent bit a man, he would stare at the copper serpent and live.

(Bemidbar 21:4–10)

*A*mong the essential questions that most religions and cultural traditions attempt to address are how to explain the mystery of our origins, and what gives our life meaning. The word *religion* is related to the Latin verb "ligare" (to bind or yoke), to connect oneself to the divine and attain wholeness in the process. What tasks must we undertake to fulfill this mandate to attain wholeness and bind ourselves to God, and how do we come to grips with that which bites us?

The Hafetz Hayyim, in his work *Ahavat Hessed*, suggests that one of the main purposes of Judaism's laws is to actualize our capacity for *hessed* (*olam hessed yibaneh*, Psalm 89:3) and to imitate God's ways (*Devarim*,

11:22; *Sifrei, Ekev, Piska* 49: *Shabbat* 133b). We are given free will to achieve our holy task, and guidance through the laws of the Torah, expression of prayer, and the practice of lovingkindness to strengthen our purpose (*Aboda Zara* 17b). We have the innate capacity and the intrinsic intuition to identify what is the Godly thing to do.

We do not always find clarity with the large Mysteries of life, but we are not supposed to in this world according to the *Sefat Emet (Vayhi)*, for this is a world of *Emunah* (faith that is developed in the face of sporadic absence of clarity) rather than a world of *Emet*. *Olam Ha'emet* is the term for the next world; here our growth stems from a movement toward truth, and our contributions to the world are enlarged in this process of struggle (Ramban, *Bereishith* 22:2). Our trial is that we are to achieve this growth, this actualization of the image of God, while at the same time grappling with drives that may also remove us from our mandate.

Those of us seeking to live lives filled with *hessed* must face those drives that threaten to remove us from our mandate to live as ethically as possible, and in fact to go even further, to make these drives vehicles through which to discover the Holy. The enticements of the modern world feed the hunger of the evil inclination, especially when our ability to discern meaning is clouded by a lack of learning Torah with depth, and we are given facile answers to challenging questions, answers that do not satisfy the discerning intellect. While the study of Torah in a pre-modern environment, within a community that had common values and goals was sufficient to hold an individual to continue within communal norms, the openness to alternative explanations of reality, the temptations that fulfill the body, and the forces of evil that have overcome perceptions of God's justice in the universe have led many of our young people to leave the path of Torah. They are sometimes attracted by other spiritual paths that attempt to address their soul's yearning, and they no longer seek meaning within the Jewish path. Examples of lack of proper ethical behavior by some Jewish leaders have also left them with troubling questions.

There is one very rich psycho-spiritual-ethical movement from our tradition that can be employed as a powerful tool to help promote wholeness and help us to reach our goal of becoming evolved ethical beings, and humans capable of acts of *hessed*. It has the capacity to address the ethical dilemmas that each of us confronts within our own human struggles, to set out a path where we can improve in the face of trials to ethical behav-

ior, and to attract others who are looking for a means to help them come to grips with their instincts as they begin the spiritual path. Just as in the Torah, where we learn from the story of “The Copper Serpent” (*Bemidbar* 21:4–10), that that which bites you can also heal you if you face it, engage with it, trace it to its root and come to know it, this movement affirms that only by acknowledging the power of the instinct, and identifying its origin and evolution can the journey with the instincts be a means to bring one closer to God.

This movement is Mussar. The Mussar movement arose in the nineteenth century, most centrally influenced by R. Israel Wolf Lipkin, known as Reb Yisrael Salanter (1810–1883), in a period impacted by the Enlightenment and what Reb Yisrael perceived as a lack of spiritual/ethical depth in parts of the Jewish community, including the yeshivot. Reb Yisrael derived his central teachings from the Torah, Proverbs (*Mishlei*), Saadya Gaon’s *Emunot V’Deot* from the tenth century, Ibn Pakuda’s *Hovot Halevavot* from the eleventh century, and the Ramhal’s *Mesilat Yesharim* from the eighteenth century.

Reb Yisrael was bothered by the phenomenon of Jews being outwardly observant of ritual commandments while at the same time neglecting social and interpersonal commandments. For example, he noticed that fellow Jews were very concerned about discovering a drop of blood in an egg (which would deem it non-kosher), but not as concerned with the blood that rises in the face of someone who has just been hurt by slander or gossip. He wanted one to become aware of inner structure as the judge of a religious act; if one did not become more aware, one would end up living a life based on habit, diversion, and conformity. What has often passed for religion is this habituation pattern (making of religion a mere plethora of obsessive details to gain control over anxiety); so-called reason can also be just a rationalization of instincts and fears (for example, the male fear of giving up power and control of the synagogue can lead to the halakhic claim that women are only permitted to take on proscribed roles).

In Reb Yisrael’s eyes, religion had become a *hergel*, a cultural “habit,” where people came together to join a community that supported a specific lifestyle, but did not sufficiently confront their behavior, inner motivations, and elevate their religious practices as a means toward connecting to God. He tried to understand this phenomenon and came to the conclusion that human beings are more powerfully influenced by deep emotion-

al forces than simple rational motivations. Unless these emotional forces are addressed, they will always undermine our rational proclivities. He called these forces *keihah*, the dim or dark part of the psyche, as opposed to the less potent *meir*, bright, clear part of the psyche (*Ohr Yisrael*, p. 25). The dim part of the psyche could become ruled by the bright part, but only with consistent work, combining intellect and emotion.

According to Reb Yisrael, one must become acquainted with the totality of one's inner patterns in order to become the very one that one's destiny calls one to, the ethical, spiritual being that the Torah requires. As Reb Yisrael put it, "The Torah came to create a *mentsch*," the more human you are, the more Godly you are, the more Jewish you are. But this is possible only when one can gain some insight into the "*keihah*" as well as the "*meir*" part of one's psyche. His ideal was for every human being to be conscious of the "opposites" and thus capable of utilizing every character trait and its opposite (*Kol middah v'hipukho*, *Ohr Yisrael*, p. 42), so that he can express the most appropriate response in every situation. One has to be capable of experiencing pride within, in order to recognize the need to honor others and bestow this appropriately upon another, but one must also be capable of humility (*perishut*) in order not to overly demand recognition from others (p. 42).

As a classically trained rabbi and also a depth psychologist, I have come to realize that this insight is similar to Freud's notion of the unconscious (dark, inaccessible) and conscious (more accessible) forces that make up our psyche (SE, XXII. 73). Jung also discovered that we are filled with opposites, a veritable *complexio oppositorium*, and only with this awareness can we reach the greatest consciousness and depth. The goal is not to repress one side of the opposites but to recognize the "opposite" so the repressed drive does not control us. Examining the drive through recognition is the only way to transform its energy to a positive direction, and understand its "root," its motivating purpose to reduce stress (pleasure principle). In reality the pleasure principle does not reduce stress, but creates additional stress because of future consequences (for example, expressing harsh anger toward another creates an enemy who will spread evil gossip in the future about you). So understanding what Freud called the "reality principle" and what Reb Yisrael called "*hokhmat olam*" leads to more fruitful behavior. As the Talmud says, "Who is wise? He who can see the consequences of his actions" (*Tamid* 32a).

Reb Yisrael brought the example of Moshe Rabbeinu as one who epitomizes the capacity to experience all the *middot*, and thus become the most open and empathetic of all human beings (“*ve-haIsh Moshe anav me’od mikol adam*,” *Bemidbar*, 12:3). The Midrash points out that Moshe experienced everything of which one is capable. He is abandoned as a child, yet is raised in the house of the Pharaoh. He lives in an urban environment in Egypt, and in a rural environment in the desert. He goes off on a spiritual journey to find the burning bush, and comes back to share this knowledge with his people. We even find Moshe as a murderer of an Egyptian in the Torah. Yes, Moshe experiences everything, so he can empathize with everyone. He knows the narrow line between self-control and anger, between restraint and impulsivity; and therefore he can probably empathize even with a murderer. Moshe also had an awareness of his inner complexity. The Midrash relates a story that Pharaoh had suspicion that Moshe may be the redeemer of the Hebrew people, since he was very intelligent, and there was a rumor among the Israelites of an impending redemption. So Pharaoh asked his astrologers and phrenologists to do a personality check of Moshe. They came back in a few weeks and said, “No way can it be Moshe. Moshe is by nature gluttonous, depressive, licentious, slothful, etc.” And the rabbis state that this was indeed true, the greatness of Moshe was that he became Moshe in spite of these inner tendencies; and it was the awareness of these tendencies that made him so open and empathetic to others (*Shemoth Rabbah*, no. 1).

The Mussar methodology as developed by Reb Yisrael focused on the removal of those impediments that inhibit spiritual connection, and helped students and practitioners to face their fears and to move forward with them. The methods employed by the Mussar movement begin with Reb Yisrael’s personal example found in the many stories of his ethical behavior. One such story is as follows: Once his students observed that Reb Yisrael only used the minimal amount of water to wash his hands (only to his knuckles) before the meal. They asked him about this since it was considered virtuous to use the maximum amount of water (to the wrist). Reb Yisrael replied, “True, but not at the expense of the water carrier having to carry a heavier load of water” (Gottlieb, “R. Yisrael Salanter and Therapeutic Values,” *Tradition*, Vol. 15).

For practice, he gathered a group (“*va’ad*”) of students and had them focus on a particular character trait and work on it for several weeks at a

time (*heshbon haNefesh*). They were to engage in introspective meditation (*hitbonenut*) while focusing on the trait. These traits include humility, patience, gratitude, compassion, order, equanimity, honor, simplicity, enthusiasm, silence, generosity, truth, moderation, loving-kindness, responsibility, trust, faith, fear of Heaven, decisiveness, diligence, and calmness. The students were asked to meet and discuss the trait with their peers, reporting their progress and listening to the feedback of the group members. They were to keep journals in which they were to record at night their encounter with the trait (*middah*), and in the process they might notice other traits that seemed to emerge as well.

They were to arise with enthusiasm in the morning and recite a verse from Scripture which reminded them of the trait so that they would begin their focus right from awakening (*hitorerut*). For example, if they were working on Equanimity, they might recite the verse from *Tehillim*, “*shiviti Hashem leNegdi tamid*” as they awaken. Reb Yisrael also started a “Mussar *shtiebel*” where a Mussar master would give a Mussar schmooze, usually between *Minha* and *Arbith*, devoted to the theme that they were studying. It was a talk taken from a lesson in Torah, but with the intent of reaching the heart and rousing emotion. Many times a verse was repeated over and over in a sing-song to break through defenses (*hitpa'alut*). Often the themes encouraged imagining the experience of living from the soul and the rewards of the Light. Courage and not despair, and the possibility of repentance were emphasized, for it was suggested that anyone could “reach the level of Moshe Rabbeinu.” They also engaged in intense communal prayer that impacted each of the participants, Mussar Torah interpretations that focused on inwardness, and analysis of mitzvot and tales from a psycho-spiritual point of view.

Reb Yisrael's astute observational skills led him to discover another deleterious behavioral pattern that originated from a lack of consciousness. He observed that when one sees imperfections in others, instead of looking into the source of these imperfections within, he creates an imbalanced, judgmental vessel under the guise of ethics. As Reb Yisrael said, “Rather than worrying about another person's spiritual level and one's own physical needs, one should worry about another person's physical needs and one's own spiritual level” (Gottlieb). So, for Reb Yisrael, a system of compassionate ethics could only be achieved if one is aware of one's own unconscious forces that one tends to repress and deny because of discom-

fort with this knowledge and the shame that it brings. One prefers blindness at times to these deep inner forces, and chooses to operate on a restricted “rational” level to avoid discomfort. But this can lead to disastrous ethical consequences, especially when it is supported by a communal stance that seeks comfort, rather than self-confrontation and growth. Reb Yisrael was confident that even though the “dim” forces were strong, one’s desire to grow, and the soul’s need to find meaning and growth (even though it was painful) was a strong asset and thus the soul’s quest would succeed with the aid of proper tools, strong effort and the aid of God. Though a human being is free in fantasy, but limited in reality (*Iggeret haMussar*, p. 1), though one is forced to yield to life’s limits and ultimately to tragic death, the attenuation of imagination can lead to a life of accomplishment and actualization. (In psychological terms, the reality principle would triumph over the pleasure principle). One only had to be awakened to inner motivations that led one to flee from death and vulnerability, escape into habit and diversion, and make religion itself into another regressive habit.

Moreover, Reb Yisrael asserted, if one did not find greater consciousness, even the adjudication of halakhic decisions would be fraught with unconscious agendas rather than with true objectivity. God would be worshipped in the wrong spirit, emphasizing rites and rituals, but lacking greater interest in social and interpersonal conduct—and this would cause a great *hilul hashem*, turning people away from Judaism.

Why is this important to articulate? Because so many of our young people are attracted to other religions and movements such as Hinduism, Buddhism, Humanism, and secularism because they do not realize that we have authentically Jewish spiritual approaches within Judaism. Though there have been many sages who have objected to the need for Mussar in the past, and posited that Torah study itself is sufficient to perfect the personality, our modern experience has revealed that at this time we need more, a specific attempt to refine the *middot*, so as not to create further *hilulei hashem* in the world, and so that an *am kadosh* becomes strengthened. Our sages teach that Torah without consciousness does not always lead to a successful outcome. As R. Hanina Ben Dosa said: “Anyone whose awareness of sin precedes his learning, his wisdom will endure, but anyone whose wisdom takes priority over his fear of sin, his wisdom will not endure” (*Avot* 3:11). As Reb Yisrael Salanter insightfully

pointed out, certain character traits are universal and can only be overcome with consciousness and practice. As he said, “A poor person with a piece of bread can be as gluttonous as a rich person with a feast” (Gottlieb, p. 127).

Thus he created this unique methodology to develop consciousness and ethical deportment. R. Yisrael believed that by engaging in conscious practices and reinforcing them, and through sublimation and becoming aware of and understanding the unconscious, change could come about. Reason must be the powerful tool to help achieve this, but reason alone was not powerful enough to prevail over instincts. Change comes about when rational insights are brought down to the emotional level. This is difficult because a human being is fundamentally irrational, so one must work hard on it. Reason had to be combined with strong emotional passion in order to create a strong enough energy to overcome resistance and habit, and it had to be reinforced through action. Reb Yisrael said, “Our impulses are swiftly running currents which drown our intelligence if the latter is not carried over them in the boat of emotion and enthusiasm.” Thus the Mussar *shtiebel* is so important. And this desire must be translated into and reinforced by action.

One interesting school of Mussar, the Slobodka School, has particular contemporary relevance. In the Slobodka School, the spirituality of man, his unique potential, was offered through parables of our ancestors. It was taught that the physical was also holy, and the strategy was an appeal to greatness, to imitate God’s ways in order to know God, to be loving just as God is loving, and this is what manifests God’s presence in the world. It was taught that to serve man is to serve God; kindness affects the doer too; and happiness is achieved through the mitzvot. Another practice was daily meditation and self-analysis of one’s relation to the trait (*hitbonenut*), attempting to get to the habits that prevented successful mastery of the trait; patterns that had been erected to escape confronting anxieties and perceptions of inadequacies. These patterns inhibited one’s progress and took great effort to unravel. They committed themselves to transform a life based on ego values, in order to live a life from the soul, in order to become a *mentsch*, an ethical *ba’al middot*.

In the Navardok School, students were asked to engage in practices that would break attachments (*shevirat haMiddot*) to traits that inhibited growth. For example, if they were working on humility, they may have

been asked to go down to the train station in disguises and carry the luggage for passengers in need. These actions reinforced the progress that they made in their contemplative mode. Furthermore, they all studied the halakhot related to the trait so that their consciousness was aroused to concentrate on keeping vigilant in practice, and this would lead to transformation in behavior. When they studied they were also asked to do so aloud, repeating the meaningful passages so they would make an imprint on their heart. They were also asked to study *Hoshen Mishpat* (social laws) and *hokhmat olam* (practical wisdom, or what we now call human psychology). Finally, they contemplated the results of their actions, and developed new habits through practical action and reinforcement.

How can the essential insights and teachings of the Mussar movement and its methodologies to improve character be implemented in a modern context? There are already many examples of yeshivot, schools, synagogues, and the Mussar Institute under the guidance of Alan Morinis that are utilizing its methodology to inspire adherents to its philosophy. Sensitive people who are attracted to Mussar seek not only their own personal spiritual growth, but also a system that leads to a mature faith, and an enlightened perspective on religion.

At the Academy for Jewish Religion, California, I have instituted a Mussar program as part of the curriculum to train professional clergy leaders. All students studying at the Academy are required to attend a Mussar group for three years during their study. They are placed with a group of six to eight students and must attend the group for one hour each week. Students must also keep a journal and on a daily basis insert thoughts related to their experience with the trait that they are working on. Each week they also listen to a “Mussar schmuess” related to the *parasha* of the week. Reading material includes an article that I wrote in *Tradition* some years ago that summarizes the highlights and goals of the movement, as well as *Everyday Holiness* by Alan Morinis and Luzatto’s *Path of the Just*. The group leader is a fellow student who has demonstrated leadership capacity, and who has taken a course on Mussar and also received some training with me. After every Mussar group session, which takes place on a Sunday evening, I meet with the group leaders (as their supervisor) for an hour to review their meeting with their groups. There we work together to address challenges that have arisen through supportive suggestions, and review progress or outcomes the following week.

Every two weeks, a specific character trait is chosen and sent out to all the students. It contains an assignment to read a specific chapter on the *middah*, and the students must work on that *middah* for two weeks. When each trait is chosen, I also send out a message elaborating its specific qualities, its challenges, and some typical patterns that are associated with it. I will illustrate below with two examples of such communications to the students.

Dear Students,

For the next two weeks, we will be working on the character trait Patience. Patience can be defined as the ability to wait calmly for something to happen without complaining or giving up. Patience emphasizes calmness, self-control, and the willingness or ability to tolerate delay.

Your task is to read the chapter on Patience in Morinis' *Everyday Holiness*, pp. 55–63 (he captures some astute insights related to the trait), and notice when the trait manifests each day of the week. You can enter this dynamic in your journal, and try to focus on what causes you to be impatient, what thoughts or expectations you hold that bring forth impatience. You may not be aware of these underlying expectations until you take a moment to focus and let it become conscious. Sometimes writing in your journal will enable this process, or sitting quietly and attempting to call forth what you were thinking when “impatience” emerged. This will create greater “consciousness” and may begin to interrupt reactive “impatience” through greater understanding of why you are feeling “impatient.” Perhaps examining your thoughts may lead you to discover that they are based on an egoistic thought stance, one that can be changed to a more spiritual outlook through practice. You may also have to examine your resistance to changing this outlook and what prevents your from changing this. What advantages and disadvantages exist by continuing your old way of thinking, and how does it block more direct access to your soul. A helpful practice is a morning practice of reciting a phrase (*Shiviti Hashem Lnegdi Tamid*) or viewing an image that may suggest patience (a flower for example). The final step is to utilize your Mussar group the next two Sunday evenings as a place to share your experience with Patience, and listen to your fellow group members, as a supportive, loving group member who is now actively practicing “Patience.”

Impatience is often linked to a thought stance in life where we are used to getting things instantly, and with the illusion that we have control over these things, and that we have the right to expect that which our will desires. It is linked to a philosophy where individualism/egoism is emphasized, and where we expect to succeed based on our own power (efforts).

There are cultures where individuals connect more to a group consciousness where one sees oneself as part of the whole, connected to many structures that operate at the same time, and one's expectation is just to fulfill a specific task within the whole. We do not have to stand out as heroic; we just have to fulfill the duty in front of us. The success of a complex task does not rest solely upon us, our honest efforts are demanded, but the results are not in our power. Failure, thus, does not lead to self-blame but it is often the result of circumstances beyond our control and there is often a lesson to be learned from this so-called "failure" (mistake). The Heavenly realm instructs through both "failure," and success. This way of thinking leads to greater simplicity, and greater patience.

As the Heshbon Hanefesh states, "The impatient person feels his affliction and pain more intensely than others. Moreover, he is also beset with vain regret, filled with meaningless remorse, making statements like: "Had I only not entered that business, this would never have occurred. Had I only stayed in that place for another hour, I would not have ended up here." This way of thinking is a result of an inflation of our power in this world. The antidote to impatience is humility: knowing what we have the power and responsibility to change and knowing where to leave space for others, and for the patient way of the universe.

It is humbling and painful to realize that there are many things in the universe that are uncertain and that do not agree with our ego's wishes. But when we "endure" this fact, we can move to a much more truthful awareness of how the relationship between our ego and soul needs to shift for a more wholesome, spiritual way of living; a more patient, less angry vessel is developed, our ego's agenda has been revealed and we can see it as separate from our soul's path. Our ego can now be utilized to actualize our soul's agenda. So waiting, which was once an excruciating experience for our impatient ego, now becomes a yielding to the timing of the universe and not our timetable. We are no longer in the painful state of "wasting time" because it is not adhering to our ego's definition of when things should occur. We see that our timetable is an extension of our ego, but in order to gain greater balance we must learn to yield to the limits and timetable of the Universe, the Holy *Shekhinah*.

Blessings,

Rabbi Mel Gottlieb

Dear Students,

The next theme for our spiritual development groups is the theme of Order. The reading is to be found in Alan Morinis' book *Everyday Holiness* on

pages 87–97. This theme is certainly relevant to each of us, who live in a world with a plethora of responsibilities that can be at times overwhelming. We must learn to prioritize, to sacrifice, to yield to limits, so that a sense of order emerges that promotes our spiritual journey and goals. Inevitably, in this process, when we pay heightened attention, we may unmask values that are in conflict, and that prevent us from clearing out distractions and additions, that when removed would allow us to pursue a more “orderly” life. We might discover that our attachments to material pursuits and pleasures take up more time than we would want them to if we are to achieve our spiritual goals. Then we face the question as to why it is so difficult to remove some of these extraneous habits, what role do they fulfill in our lives. Can applying heightened consciousness to their lack of value from a spiritual perspective, allow us to remove ourselves from them, and spend more fruitful time in areas that are more in synch with our “calling”? Can we now see that these time-consuming distractions are actually “habits” that have taken on a “life of their own,” and that we must thus make a conscious effort to “liberate” ourselves from them? Sometimes these habits are merely symptoms that are utilized to fill our hungers for meaning, and our search for meaning must come back to the more fundamental teachings and values in our tradition.

Quite often, it is other character traits that need to be recognized and transformed in order for us to be able to lead a more “orderly” life. Sometimes it is our egocentric quest for “honor and recognition,” or material security, or our desire to satisfy our impulses that must be confronted and transformed as they interfere with a disciplined yielding to the steps on the path of spiritual integration. For example, if we have a “seder” (a designated time) to study Gemara, but we get a call to give a speech which would give us “honor,” but also disrupt our study (our sense of Order), will we give in to our desire for honor and allow our “order” to be disrupted? When we reflect on this we will see that our motivation here is linked to our desire for “Honor” (Kavod), so that must be recognized and transformed if we are to achieve “Order.”

Once you begin to work on “Order” these next two weeks, many interesting layers of character traits and habits will rear their heads, and you will be blessed with a greater awareness of the complexity of your inner life. This awareness will become the first blessed step, enabling you to achieve the eventual goal of becoming more orderly and thus achieving magnificent spiritual growth, with noble effort, slowly but surely. If you begin this task, Hashem will bless your efforts and the universe will come to your aid, because a new energy will emerge from your vessel, an energy that will attract support and strength. So for the next two weeks please write journal entries related to your experience with order/disorder and see

Mel Gottlieb

what emerges for you. Discuss it in your groups, and when you wake up in the morning ask Hashem to help you find order in your life. “*Ma norah ma’asekha*,” How magnificent are Your works O Lord! May you be strengthened in your work!

Sincerely,

Rabbi Mel Gottlieb

Students have made wonderful progress in improving their character traits and their growth as future spiritual and community leaders. The Mussar model can be a vital way of life to elevate the ethical level of our religious communities, and can be implemented quite easily by those current religious leaders who wish to avail themselves of this tradition.

“The Chosen People”: An Ethical Challenge

HAYYIM ANGEL

(Rabbi Hayyim Angel is Rabbi of Congregation Shearith Israel, the historic Spanish and Portuguese Synagogue of New York City—founded 1654. He teaches Bible at Yeshiva College and is the author of two books and numerous articles.)

The concept of the Chosen People is fraught with difficulties. Historically, it has brought much grief upon the Jewish people. It also has led some Jews to develop chauvinistic attitudes toward non-Jews. Nonetheless, it is a central axiom in the Torah and rabbinic tradition, and we therefore have a responsibility to approach the subject forthrightly. In this essay, we will briefly consider the biblical and rabbinic evidence regarding chosenness.

The Book of Genesis

A major theme of the book of Genesis is the refining process of the Chosen People. The Torah begins its narrative of humanity with Adam and Eve, the first people created in the Image of God. The Torah’s understanding of humanity includes a state of potential given to every person to connect to God, and an expectation that living a moral life necessarily flows from that relationship with God.

Cain and Abel, the generation of Enosh, Noah, and the Patriarchs spontaneously brought offerings and prayed without any commandments from God to do so. God likewise held people responsible for their immoral acts without having warned them against such behaviors. Cain and the generation of the Flood could not appeal to the fact that they never

received explicit divine commandments. God expected that they naturally would have known such conduct was unacceptable and punishable.

Adam and Eve failed by eating of the Tree of Knowledge, but they were not completely rejected by God, only exiled. Cain failed morally by murdering his brother—and he, too, was exiled. Their descendants became corrupt to the point where the entire human race was overwhelmed by immorality.

At this point, God rejected most of humanity and restarted human history with Noah—the “second Adam.” After the Flood, God explicitly commanded certain moral laws (Genesis 9), which the Talmud understands as the “Seven Noahide Laws” (ethical monotheism). Noah should have taught these principles to all his descendants. Instead, the only recorded story of Noah’s final 350 years relates that he got drunk and cursed his grandson Canaan. Although Noah was described as a good and righteous man, his story ends in failure. He did not transmit his values to succeeding generations.

As the only narrative spanning the ten generations between Noah and Abraham, the story of the Tower of Babel represents a societal break from God. It marked the beginnings of paganism and unbridled human arrogance. At this point, God appears to have given up on having the entire world perfected, and instead chose Abraham—the “third Adam”—and his descendants to model ethical monotheism and teach humanity.

This synopsis of the first twelve chapters of Genesis is encapsulated by Rabbi Ovadiah Seforno (sixteenth-century Italy). Only after these three failures did God select Abraham’s family, but this was not God’s ideal plan:

It then teaches that when hope for the return of all humanity was removed, as it had successfully destroyed God’s constructive intent three times already, God selected the most pious of the species, and chose Abraham and his descendants to achieve His desired purpose for all humanity. . . .(Seforno, introduction to Genesis)

In *The Nineteen Letters*, Rabbi Samson Raphael Hirsch (nineteenth-century Germany) arrived at a similar conclusion.

Nor was there any genetic superiority ascribed to Abraham and his descendants. To the contrary, the common descent of all humanity from Adam and Eve precludes any racial differentiation, as understood by the Mishnah:

Furthermore, [Adam was created alone] for the sake of peace among men, that one might not say to his fellow, my father was greater than yours (*Sanhedrin* 37a).

Abraham and descendants thus became the Chosen People—a nation expected to do and teach what *all* nations ideally should have been doing. Indeed, Abraham is singled out in the Torah as the first teacher of these values:

The Lord said, Shall I hide from Abraham that thing which I do, seeing that Abraham shall surely become a great and mighty nation, and all the nations of the earth shall be blessed in him? For I know him, that he will command his children and his household after him, and they shall keep the way of the Lord, to do justice and judgment; that the Lord may bring upon Abraham that which he has spoken of him. (Gen. 18:17–19)

The remainder of the book of Genesis revolves around the selection process within Abraham's family. Not all branches would ultimately become Abraham's spiritual heirs. By the end of Genesis, it is evident that the Chosen People is comprised of all Jacob's sons and their future generations.

Although the book of Genesis specifies the role and identity of the Chosen People, two difficult questions remain. 1. Once Israel was chosen, was this chosenness guaranteed forever, or was it contingent on the religious-ethical behavior of later generations? Could a sinful Israel be rejected as were the builders of the Tower of Babel? 2. Since the time of the Tower of Babel, is chosenness exclusively limited to Israel (either biological descendants or converts), or can non-Jews again become chosen by becoming ethical monotheists (either on an individual or national level)?

Israel's Eternal Chosenness

God addressed the first question as He was giving the Torah to Israel:

Now therefore, if you will obey My voice indeed, and keep My covenant, then you shall be My own treasure among all peoples; for all the earth is Mine; And you shall be to Me a kingdom of priests, and a holy nation. These are the words which you shall speak to the people of Israel. (Ex. 19:5–6)

Thus, God's covenant with Israel is a reciprocal agreement. If Israel does not uphold her side, it appears from these verses that she would cease

to be God's treasure. It is remarkable that the very beginning of Israel's national identity is defined as conditional, rather than absolute.

Later prophets stress this message, as well. Amos states that Israel's chosenness adds an element of responsibility and accountability. Infidelity to the covenant makes chosenness more dangerous than beneficial:

Hear this word that the Lord has spoken against you, O people of Israel, against the whole family which I brought up from the land of Egypt, saying: Only you have I known of all the families of the earth; therefore I will punish you for all your iniquities. (Amos 3:1–2)

Amos's contemporary Hosea employed marriage imagery to demonstrate that Israel's special relationship with God is contingent on her faithfulness to the covenant. As the Israelites were unfaithful in his time, God rejected them:

She conceived and bore a son. Then He said, "Name him 'Lo-ammi'; for you are not My people, and I will not be your God." (Hos. 1:8–9)

However, this was not a permanent rejection from this eternal covenant. Rather, the alienation would approximate a separation for the sake of rehabilitating the marriage rather than a permanent divorce. The ongoing prophecy in the book of Hosea makes clear that God perpetually longs for Israel's return to a permanent restored marriage:

And I will espouse you forever: I will espouse you with righteousness and justice, and with goodness and mercy, and I will espouse you with faithfulness; then you shall be devoted to the Lord. (Hos. 2:21–22)

The book of Isaiah makes the point even more explicit: there was no bill of divorce:

Thus says the Lord, Where is the bill of your mother's divorcement, with which I have put her away? Or which of My creditors is it to whom I have sold you? Behold, for your iniquities have you sold yourselves, and for your transgressions your mother was put away. (Isa. 50:1)

At the time of the destruction of the Temple, Jeremiah took this imagery to a new level. There *was* a divorce, yet God still would take Israel back:

It is said, If a man sends away his wife, and she goes from him, and becomes another man's, shall he return to her again? Shall not that land be greatly

polluted? You have played the harlot with many lovers; yet return to me! says the Lord. (Jer. 3:1)

Jeremiah elsewhere stressed the eternity of the God-Israel relationship:

Thus said the Lord, Who established the sun for light by day, the laws of moon and stars for light by night, Who stirs up the sea into roaring waves, Whose name is Lord of Hosts: If these laws should ever be annulled by Me—declares the Lord —Only then would the offspring of Israel cease to be a nation before Me for all time. (Jer. 31:5–6)

To summarize, Israel's chosenness is conditional on faithfulness to the covenant. However, failure to abide by God's covenant leads to separation rather than divorce, and the door always remains open for Israel to return to God. The special relationship between God and Israel is eternal.

Righteous Gentiles Can Be Chosen

Let us now turn to the second question, pertaining to God's rejection of the other nations after the Tower of Babel. Can these nations be chosen again by reaccepting ethical monotheism? The answer is a resounding "yes." Prophets look to an ideal future, when *all* nations can again become chosen:

In that day five cities in the land of Egypt shall speak the language of Canaan, and swear by the Lord of hosts; one shall be called, The city of destruction. In that day there shall be an altar to the Lord in the midst of the land of Egypt, and a pillar at its border to the Lord... In that day shall Israel be the third with Egypt and with Assyria, a blessing in the midst of the land; Whom the Lord of hosts shall bless, saying, Blessed be Egypt My people, and Assyria the work of My hands, and Israel My inheritance. (Isa. 19:18–25)

Similarly, Zephaniah envisions a time when all nations will speak "a clear language," thereby undoing the damage of Tower of Babel:

For then I will convert the peoples to a clear language, that they may all call upon the name of the Lord, to serve Him with one accord. (Zeph. 3:9)

Thus, God's rejection of the nations at the time of the Tower of Babel similarly was a separation for rehabilitation, not a permanent divorce. Were the nations to reaccept ethical monotheism, they too would be chosen.

In halakhic terminology, non-Jews who practice ethical monotheism are called “Righteous Gentiles” and have a share in the world to come (see *Hullin* 92a). According to Rambam, they must accept the divine imperative for the seven Noahide laws to qualify as Righteous Gentiles. If they act morally without accepting this divine imperative, they should instead be considered “Wise Gentiles”:

[Non-Jews] who accept the seven [Noahide] commandments are considered Righteous Gentiles, and have a share in the World to Come. This is on condition that they observe these commandments because God commanded them in the Torah. . . . But if they observe them because of reason, they are not called Righteous Gentiles, but rather, *elah* (printed editions: and not even, *ve-lo*) Wise Gentiles. (Rambam, *Laws of Kings*, 8:11)

[Regarding those printed editions that say *ve-lo* instead of *elah*: this appears to be a faulty text, and Rambam intended *elah*, i.e., that they are indeed Wise Gentiles. See Rabbi Hayyim David Halevi, *Asei Lekha Rav* 1:53, p. 158; Rabbi Joseph Soloveitchik, *Abraham’s Journey* (2008), pp. 172–173; Rabbi Abraham Isaac Kook (*Iggerot Ha-Ra’ayah* 89, vol. 1, pp. 99–100, quoted in Shalom Rosenberg *In the Footsteps of the Kuzari*, 2007, vol. 1 p. 161.)

To summarize, then, one is chosen *if one chooses God*. For a Jew, that means commitment to the Torah and its commandments; for a non-Jew, that means commitment to the seven Noahide laws (see *Mishnat Rabbi Eliezer* 6, quoted in M. Greenberg, pp. 375–376). Non-Jews who are Righteous Gentiles are chosen without needing to convert to Judaism. God longs for the return of all humanity, and the messianic visions of the prophets constantly reiterate that aspiration.

Israel as a Nation of Priests

Although the door remains open for all descendants of Adam and Eve to choose God and therefore be chosen, Israel still occupies a unique role in this discussion. Israel was the *first* people to recognize God in this way. God calls Israel His “firstborn” (Ex. 4:22). Using the marriage imagery, Israel is God’s wife, which carries with that a special relationship.

Perhaps the most fitting analogy that summarizes the evidence is Non-Jew : Jew :: Jew : Priest. God employs this terminology at the Revelation at Sinai:

Now therefore, if you will obey My voice indeed, and keep My covenant, then you shall be My own treasure among all peoples; for all the earth is Mine; And you shall be to Me a kingdom of priests, and a holy nation. These are the words which you shall speak to the people of Israel. (Ex. 19:5–6)

Being Jewish and being a priest both are genetic. A priest also is a bridge between the people and God and serves in the Temple on behalf of the people. Similarly, Israel is expected to guard the Temple and teach the word of God. Just as priests have more commandments than most Israelites; Israelites have more commandments than the nations of the world. The one critical distinction is that a non-Jew may convert to Judaism and is then viewed as though he or she were born into the nation. Nobody can convert to become a priest (though a nazirite bears certain resemblances to the priesthood).

When dedicating the first Temple, King Solomon explicitly understood that the Temple was intended for all who seek God, and not only Israelites:

Or if a foreigner who is not of Your people Israel comes from a distant land for the sake of Your name—for they shall hear about Your great name and Your mighty hand and Your outstretched arm—when he comes to pray toward this House, oh, hear in Your heavenly abode and grant all that the foreigner asks You for. Thus all the peoples of the earth will know Your name and revere You, as does Your people Israel; and they will recognize that Your name is attached to this House that I have built. (I Kings 8:41–43)

In their messianic visions, the prophets similarly envisioned that Israel would occupy a central role in Temple worship and teaching the nations. All are invited to serve God at the Temple:

In the days to come, the Mount of the Lord's House shall stand firm above the mountains and tower above the hills; and all the nations shall gaze on it with joy. And the many peoples shall go and say: "Come, let us go up to the Mount of the Lord, to the House of the God of Jacob; that He may instruct us in His ways, and that we may walk in His paths." For instruction shall come forth from Zion, the word of the Lord from Jerusalem. Thus He will judge among the nations and arbitrate for the many peoples, and they shall beat their swords into plowshares and their spears into pruning hooks: nation shall not take up sword against nation; they shall never again know war. (Isa. 2:2–4)

Rather than serving primarily as an ethnic description, the Chosen People concept is deeply rooted in religious ethics. It is a constant prod to faithfulness to God and the Torah, and contains a universalistic message that belongs to the community of nations. All are descendants from Adam and Eve, created in God's Image. God waits with open arms to choose all those who choose to pursue that sacred relationship with Him.

Dr. Norman Lamm observes that "a truly religious Jew, devoted to his own people in keen attachment to both their physical and spiritual welfare, must at the same time be deeply concerned with all human beings. Paradoxically, the more particularistic a Jew is, the more universal must be his concerns" (*Shema*, p. 35).

For further study, see:

Elijah Benamozegh, *Israel and Humanity*, trans. Maxwell Luria, (New York: Paulist Press, 1995).

Alan Brill, *Judaism and Other Religions: Models of Understanding* (NY: Palgrave Macmillan, 2010).

Moshe Greenberg, "Mankind, Israel, and the Nations in the Hebraic Heritage," in *Studies in the Bible and Jewish Thought* (Philadelphia: Jewish Publication Society, 1995), pp. 369–393.

Rabbi Hayyim David Halevi, *Asei Lekha Rav* 8:69.

Menachem Kellner, "On Universalism and Particularism in Judaism," *Da'at* 36 (1996), pp. v–xv.

Jon D. Levenson, "The Universal Horizon of Biblical Particularism," in *Ethnicity and the Bible*, ed. Mark G. Brett (Boston: Brill, 1996), pp. 143–169.

Rabbi Jonathan Sacks, "Jewish Identity: The Concept of a Chosen People," at www.chief Rabbi.org/ReadArtical.aspx?id=454.

Symposium on "You Have Chosen Us from Amongst the Nations," *Jewish Action* 65:1 (Fall 2004), especially the articles of Rabbis Chaim Eisen and Norman Lamm.

Conversations

Symposium on “The State of Jewish Belief,” *Commentary* 42:2 (August 1966), pp. 71–160, especially the articles of Rabbis Eliezer Berkovits, Marvin Fox, Immanuel Jacobovits, Norman Lamm, and Aharon Lichtenstein.

Truth and Consequences: A Talmudic Tale on Interpersonal Ethics

JOEL B. WOLOWELSKY

(Dr. Joel B. Wolowelsky is Dean of the Faculty at the Yeshivah of Flatbush.)

Introduction

Truth is a core ethical value in Judaism; indeed, it is God's seal. Yet, as most people know from their own experiences, the consequences of remaining loyal to the ideal of truth are not always comfortable and often involve sacrifice and suffering. One such talmudic tale illustrates this well. It is worth bringing it together from its scattered sources to understand not only the importance of truth, but the hierarchy of some of the ethical values that compete with each other.

R. Eliezer ben Hyrcanus (Pirkei d'Rabbi Eliezer 1)

Our story involves four main characters, all prominent among the second generation of tannaim (about 90–130 C.E.). The chief protagonist is R. Eliezer ben Hyrcanus, with whom we are best acquainted via a story concerning his introduction to Torah study.

His father, Hyrcanus, was a very rich man with many arable fields, but his son appears on stage weeping as he ploughs a stony plot. His father tries to comfort him by offering an arable plot to cultivate but Eliezer finds no solace in the offer. He tells his father, "All I want is to study Torah."

Hyrcanus, ever the businessman, is not inspired by his son's career goals: "Please," he tells him. "You're 28 years old! It's time to get married,

have children, and take them to school.” Yet Eliezer is not deterred and goes off to Jerusalem to study Torah with Rabban Yohanan ben Zakkai.

Eliezer’s brothers are resentful that Eliezer will spend his productive time in the Bet Midrash while they will continue to generate wealth through their work. They therefore encourage their father to go to Jerusalem to disinherit the young Torah scholar. Sharing their disdain, Hyrcanus goes to Jerusalem to make the necessary legal arrangements. When he gets there, he finds everyone crowded around a young scholar dazzling the audience with his erudition and scholarship. Discovering that it was his son Eliezer who was the subject of such acclaim, he reassesses his position and offers to disinherit his other sons in favor of Eliezer.

R. Eliezer declines the offer, proclaiming that he never desired wealth:

I asked the Holy One, Blessed Be He, only that I be worthy to learn the Torah, as it is said, “Therefore I esteem all precepts concerning all things to be right; and I hate every false way” (Psalms 119:128).

This abhorrence of falsehood will trail R. Eliezer throughout the rest of his life.

Rabban Gamliel and R. Yehoshua (Mishna Rosh HaShanna 2:8–9)

The next two *dramatis personae* are R. Gamliel (successor to Rabban Yohanan ben Zakkai, Nasi and head of the Academy) and R. Yehoshua. We first encounter them as the court is meeting to set the date of the new month.

Nowadays, we know if a Jewish month has 29 or 30 days by looking in a calendar. Originally, though, the new month was proclaimed by the Court based on the testimony of witnesses who reported seeing the new moon. If they appeared on 29th of the month, the next day was Rosh Hodesh; otherwise, the month would have 30 days.

The rabbis were competent astronomers. They were well prepared to examine the witnesses, knowing in advance where in the sky the sliver of the new moon should have appeared. One month, Rabban Gamliel accepted the testimony of witnesses whose description was faulty—but R. Yehoshua thought that they should have been rejected. Thus R. Gamliel and R. Yehoshua differed on when the new month had begun. And because it was the month of Tishri, they therefore had different views on which day the tenth of the month—Yom Kippur—would fall.

Sensing a challenge to his authority, R. Gamliel ordered R. Yehoshua to appear before him with his walking stick and moneybag in hand on the day R. Yehoshua thought to be Yom Kippur. R. Akiva, sensitive to the moral dilemma faced by R. Yehoshua, sought him out and argued that what was at stake was not the truth of the date of Yom Kippur but the integrity of the judicial system as a whole. R. Yehoshua was convinced by his argument that there was a value more important than the simple truth. R. Yehoshua therefore complied with R. Gamliel's order, and was received by the latter with respect and affection.

R. Eliezer's Student Akiva (Sanhedrin 101a)

It was characteristic of R. Akiva—the final actor in our drama—to bring people around. He knew he was able to say what he thought had to be said in a manner that made it possible for him to be heard—and he was bold enough to use his talents in conversation with anyone, including his teacher.

When R. Eliezer took ill, his students went to visit him. He said to them, "There must be great [divine] anger in the world." [Otherwise, there is no other explanation for R. Eliezer's suffering, as he felt that he could not have committed any sin the punishment for which include such pain.]

The students started to cry, but R. Akiva laughed. They said to him, "Why are you laughing?" He said to them, "Why are you crying?" They replied, "Can we see a *sefer Torah* suffering so and not cry?" He answered them, "But that is why I laugh! As long as I had seen our *rebbe* suffer no ill in this world, I feared that, God forbid, he had received all of his reward in this world. But now that I see him suffering, I am glad [because he will receive his full reward in the world to come]."

R. Eliezer understood well the significance of R. Akiva's comment. What seemed to be an attempt to comfort him for his suffering was also a reprimand for his hubris. There was a cause for his suffering, and it was neither divine wrath nor premature reward for his many merits.

He said to him, "Akiva, is it really possible that I have not fully observed the whole Torah?"

He responded, "Our master, you yourself have taught us, 'There is not one righteous man on earth who does [only] good and does not sin' (Ecclesiastes 7:20)."

R. Akiva is prepared to confront even his teacher with the truth, and he had the diplomatic facility to do so in a way that could be accepted. But such skills are laudable only when used in the service of truth, as we shall soon see.

Thus the stage is set and we know our characters well. R. Eliezer will countenance no untruth. He holds everyone, including himself, to this standard and allows himself to be criticized even by his student when it is appropriate. R. Gamliel, on the other hand, will tolerate no challenge. If necessary, even truth must bend to his authority. R. Yehoshua is willing to submit to that authority, even at the expense of his own public persona. R. Akiva too will champion halakhic policy, and he is convinced that his interpersonal talents will enable him to bring others along. Each is ready to play his part in one of the most dramatic of talmudic scenes.

The Oven of Okhnai (Baba Metsia 59b)

The curtain rises on our four protagonists as they are arguing whether or not an oven built in a particular fashion can become ritually impure. The majority felt that it could—and therefore should be destroyed so that it not defile others—but R. Eliezer felt that they were wrong.

That day R. Eliezer answered all of their challenges but he could not convince them. He said to them, “If I am right, this carob tree will prove it.” The carob tree got up and moved a hundred *ammot*—some say it was four hundred *ammot*. They said, “One cannot bring a proof from a carob tree.”

He said, “If I am right, this stream of water will prove it.” The waters flowed backward, but they replied, “One cannot bring a proof from a stream of water.”

He came back at them and said, “If I am right, let the walls of the Bet Midrash prove it.” The walls started to cave in, but R. Yehoshua stepped in. “If *talmidei hakhamim* are arguing a point,” he said, “why are you butting in?” The walls would not fall out of respect to R. Yehoshua but would not straighten out of respect to R. Eliezer. And they remain standing that way to this very day!

Finally, R. Eliezer said, “If I am right, let the heavens prove it.” A heavenly voice—a *bat kol*—declared, “What do you want with R. Eliezer? The halakha is like him in every matter!”

But even this divine confirmation of the truth of R. Eliezer’s position was not convincing. R. Yehoshua stood up and proclaimed that the verse

“It is not in heaven,” rebutting the authority of the *bat kol*. Once the Torah was given we follow the majority rule even if it is incorrect!

R. Yehoshua, of course, was demanding of R. Eliezer only what he himself had conceded long ago: The integrity of the halakhic system is of paramount importance, not the abstract truth of any particular ruling. And, in our story, none other than Elijah the prophet confirms that this is the divine will.

R. Natan met Elijah and asked him, “What was the Holy One, Blessed Be He, doing then?” He replied, “He was laughing with satisfaction, saying, ‘My children have defeated me.’”

This part of the story, which establishes the democratization of the halakhic process and the rejection of the oracle, is well known and needs no elucidation here. What concerns us, though, is the sequel to the incident, after R. Eliezer has apparently left without conceding.

The Aftermath (Ibid.)

That day they burned everything [that had come into contact with the oven and] that R. Eliezer had declared to be pure. Then they excommunicated him.

R. Akiva was sure that he could finesse this situation as he had when R. Yehoshua had differed with the majority and R. Eliezer could not see past his own self-righteousness. He offered to inform his teacher of the situation “lest someone else go and elicit a violent reaction.” No doubt he thought he could help R. Eliezer see the necessity of submitting to the will of the majority and by that set the stage for his return to the community of scholars.

He dressed in black and sat four *ammot* away from R. Eliezer, as required when meeting an excommunicated person. R. Eliezer sensed that something was wrong, and in answer to his question, R. Akiva informed him of the situation.

If R. Akiva thought he had the *savoir-faire* to either bring R. Eliezer along or at least calm him, he was wrong.

R. Eliezer’s eyes filled with tears and one third of the crops of olives, wheat, and barley disappeared. Some say the dough that women were kneading soured. Everything that R. Eliezer stared at that day burned!

R. Eliezer might have been wrong, but he sensed he had been wronged—and he knew who was responsible.

R. Gamliel was in a boat and a tidal wave threatened to drown him. He said, “This is all because of R. Eliezer ben Hyrcanus.” He stood up and declared, “*Ribbono shel Olam*, you know that I acted not out of concern for my honor or that of my family, but only for Your honor, that there not be disagreements in Israel!”

The waters settled in divine confirmation that R. Gamliel was right. But R. Eliezer’s pain was not settled.

R. Eliezer was married to R. Gamliel’s sister, and she understood the situation well. She watched over her husband, making sure that he not add his personal prayers—*tahanunim*—after the daily *Amida*. She knew what would be the content of those prayers, and she was out to protect her brother.

One day she was diverted from her mission. Some say it was because she mistakenly thought it was Rosh Hodesh (when *tahanunim* could not be said) and some say she went to give bread to a poor beggar who appeared at her door. And whether it was—ironically—confusion over the date of Rosh Hodesh or the *hessed* demands of feeding the poor that allowed her to be distracted, when she returned she found her husband saying *tahanunim*.

“You’ve killed my brother,” she said. And at that instant they heard the shofar sound from R. Gamliel’s house announcing his death.

“How did you know?” he asked her.

She replied, “We have a family tradition that all the gates of prayer may be closed, except the one for those who cry out in anguish.”

Truth must sometimes give way to the integrity of the halakhic process. But nothing permits creating unnecessary anguish. R. Gamliel may have been justified in insisting on the rule of the majority, but he had apparently reacted cruelly in confronting R. Eliezer. R. Akiva could not smooth this over. R. Eliezer could not overlook it.

The Visit (Sanhedrin 68a)

Our story has an interesting epilogue, one that adds a penetrating dimension to the interrelationship of the protagonists.

When R. Eliezer took ill, R. Akiva and his colleagues came to visit him. He

was lying on his canopied bed, and they stood outside.

While the group, as we shall soon see, included R. Yehoshua (who was older than R. Akiva), the delegation is referred to as “R. Akiva and his colleagues,” not “the students of R. Eliezer,” as was the case years before when the ill R. Eliezer was visited by his students. Here, R. Akiva has organized this visit and we—as will R. Eliezer—might well wonder as to its purpose.

It was just before Shabbat and Hyrcanus his son came in to remove his tefillin [which may not be worn on Shabbat]. He yelled at Hyrcanus, who left in anger, telling the awaiting group that his father had apparently grown senile.

Hearing this, R. Eliezer retorted, “It is you and your mother who are senile! You worry about a rabbinic violation [wearing tefillin on Shabbat] and ignore a biblical violation [by putting off lighting the candles until the last minute when Shabbat itself may be violated].”

Seeing that he was in possession of his faculties, the group of rabbis went in, but sat four *ammot* away from him, as he was in excommunication.

“Why have you come,” he asked.

“To learn Torah,” they replied.

“And where have you been until now?”

“We had no time,” they answered.

Such a feeble response must have angered R. Eliezer, as he quickly retorted in what was something of a curse and not simply prophecy, “I think you all shall not die a natural death!” He was right, and the description of the torturous end these rabbis suffered is incorporated into the Ashkenazic Yom Kippur Musaf. R. Akiva, however, still seems sure of his special relationship with R. Eliezer.

R. Akiva said, “But what shall be my end?”

“Yours shall be the worst of all,” was the curt reply.

R. Eliezer then falls into a lament filled with pathos:

He took his two arms and put them over this heart and said, “Woe to these arms that are like a closed *sefer Torah*. I learned much Torah and taught much Torah. I learned much Torah and yet acquired only as much as a dog does when it laps up water. I taught much Torah but gave over only as much as the brush picks up from the palate. I knew 300 halakhot in the abstruse area of *negaim* and no one ever asked me about them! And I knew 300 halakhot—some say he said 3,000—in the area of planting cucumbers and no one ever asked me about them except Akiva ben Yosef.”

Continuing to reminisce about a time long ago when R. Akiva was simply his student “Akiva ben Yosef,” he recalls:

Once I was walking with Akiva and he asked me, “Rebbe, teach me about planting cucumbers [through magic].” I said a few words and the field filled with cucumbers. He said, “Rebbe, teach me how to harvest them [by magic].” I said a few words and all the cucumbers were collected in one place.

The visitors regain their composure and try to take control of the conversation:

“What is the law regarding *hakadur vehaimus*, *vehakameia*, *utsror hamargaliyot*, *umishkolet ketana*?” [We shall not explicate these various categories here, because their significance lies not in their details but in something else to which we shall momentarily turn.] He replied, “Impure.” “And what about the *minal she-al gabei haimus*,” they continued. “Pure,” he replied. And when he said “Pure,” he died.

R. Yehoshua then stood up and said, “*Hutar haneder*. The excommunication is lifted.”

The key to understanding the purpose of their visit is found in the questions that they posed. As Rashi comments, these issues are the very ones that divided R. Eliezer from the rabbis in previous debates before the final break over the oven of Okhnai. And the answers he gave here are the very same ones he had given years ago in disagreeing with his colleagues.

Why did they ask these questions? Could they have thought that R. Eliezer, after suffering so much because he “hated every false way,” would change his position at the end of his life and adopt a decision he thought to be false? They could not possibly have hoped that he would reject his whole way of life in exchange for lifting his excommunication. And if he did not recant, why did they lift the excommunication? After all, “If an excommunicated person dies while still excommunicated, a stone is placed on his coffin” (*Mishna Eduyot* 5:6).

It must be that the rabbis had come to realize that they had erred in the way they treated R. Eliezer. They therefore had come to apologize and lift the excommunication. Indeed, it is not surprising that it was R. Yehoshua, he who had originally urged R. Eliezer to conform, who lifted the excommunication. R. Yehoshua had apparently been transformed by the uprising against R. Gamliel and his tactics.

The Deposing of R. Gamliel (Berakhot 27b–28a)

It happened that a student once asked R. Yehoshua if the evening prayers are obligatory or voluntary in nature. “It is voluntary,” he replied. He then went to R. Gamliel with the same question and he answered that is obligatory. “But,” responded the student, “R. Yehoshua told me it was voluntary.” R. Gamliel did not respond but told him to wait until the rabbis come into the Bet Midrash and sit down.

When they came in, the student asked his question again. R. Gamliel replied as before. “Is there anyone who disagrees,” he asked his colleagues. “No,” replied R. Yehoshua.

“But,” R. Gamliel challenged him, “I heard you said it was voluntary. Yehoshua,” he commanded (omitting the honorific “Rabbi”), “stand up to face your accuser!” R. Yehoshua stood up and admitted that he cannot deny an accuser who was present and able to testify.

R. Gamliel sat and continued his lecture while R. Yehoshua remained standing—until the assemblage demanded that Hutzpita the *Meturgamin* stop translating R. Gamliel’s discourse.

“How long shall we allow R. Gamliel to torture R. Yehoshua,” they demanded. And they removed R. Gamliel from office.

This event no doubt transformed R. Yehoshua. He had allowed himself to be humiliated by R. Gamliel because he thought that was what the halakha required of him. It took his colleagues to bring him to the realization that R. Gamliel was no longer acting in support of the system but in support of his ego.

The uprising humbled R. Gamliel and emboldened R. Yehoshua. When R. Gamliel subsequently went to him to apologize, he noted in surprise that R. Yehoshua’s walls were blackened with coal, indicating that R. Yehoshua was a poor coalman. “Woe to the generation that has you as a leader,” R. Yehoshua retorted, “because you never took the time to learn how hard your colleagues have to work to earn a living!”

R. Gamliel manages to mollify R. Yehoshua, and when R. Akiva realizes that R. Yehoshua had in fact been appeased, he offers to go with him to inform R. Gamliel that he was to be reinstated.

In planning this final visit to R. Eliezer, R. Akiva, true to character, must have seized the opportunity to organize a delegation to lift the excommunication—and he understood that now R. Yehoshua would be willing to go along.

R. Akiva realized that R. Eliezer was too principled to either abandon his position or accept anything other than a fully honest retraction on their part. We can well imagine R. Akiva mapping out the meeting in his mind. R. Eliezer is eager to teach Torah; that is his whole life. “We have come to learn Torah,” they shall tell him, and then ask him about his old areas of disagreement. He undoubtedly will maintain his position, and they will then apologize for tormenting him for his principled stand and lift the excommunication.

But God has a special punishment for those who wait too long to apologize. R. Eliezer had grown mordant for having been deserted by his colleagues—and especially by his close student Akiva. They could not respond quickly enough to his acidic reaction to their visit. When they finally can pull themselves together, it is too late. When he answers “Pure,” he dies before they can have their say.

The Curtain Falls (Sanhedrin 68a)

One can imagine R. Akiva’s response. He had waited too long, and his teacher had died bitter, thinking he had been forsaken by all his colleagues and his student too. The gates of prayer are never closed to those who cry out in anguish. Truth is important. Halakha is important. Loyalty is indispensable.

That Saturday night R. Akiva met R. Eliezer’s funeral procession as it was going from Casearea to Lod. He was beating himself until blood flowed. He stood to eulogize him and said [as Elisha said of Elijah], “Oh father, father! Israel’s chariots and horsemen!’ (II Kings 2:12). I have many coins but no moneychanger to turn them into currency.”

Afterword

So ends the talmudic tale of Torah giants trying to balance the competing ethical demands of dedication to truth, commitment to collegiality, modesty in communal leadership, faithfulness to halakha, and loyalty to one’s teachers . . . a challenge to them and an ever-present challenge to us.

Émile Zola's Moral Outrage: The Ethics of Whistle-Blowing Today and Then

ROBERT S. APRIL

*(Dr. April, a practicing neurologist, teaches at the medical school of
New York University.)*

Introduction

Émile was a popular name for Jewish boys in the twentieth century because of the important role that the French writer, Émile Zola, played in the Dreyfus Affair during the 1890s. To commemorate the 108th anniversary of Zola's death (September 29, 1902), I would like to tell how Émile Zola was the quintessential whistle-blower of his day and use this case as a model for a discussion of Jewish thinking on the subject of the exposure of ethical wrong-doing in public or private life.

The whistle-blowing I will discuss is a series of articles in newspapers and pamphlets in which Zola exposed the criminal wrong-doing committed by the military courts against the Jewish Army Captain, Alfred Dreyfus, who was falsely accused of treason. Zola exposed himself to scorn and personal danger despite his not having known Dreyfus or his family. He risked reputation, fame, and safety to do the right thing. This paper will concentrate on some of Zola's writings and then discuss their content with respect to Jewish ideas.

Émile Zola was not Jewish. His heroic support of Captain Alfred Dreyfus is a courageous example of ethical engagement. The points he

made in each paper were part of the overall act of whistle-blowing. In what follows, I will note each ethical point of the overall argument, along with the title of the respective writing in which it is expressed:

1. Defending the innocent (*M. Scheurer-Kestner*)
2. Accusing the general culprit and the root of all evil (*The Proceedings*)
3. Proving his point (*The Syndicate*)
4. Calling to the conscience and ethics of France while warning of the danger of racism, hypocrisy, and intolerance (*Letter to France*)
5. Addressing the future (*Letter to the Young*)
6. An unrestrained offensive: the facts of the case in detail for each malefactor, a summary of all the other papers (*J'Accuse*)

The progressive nature of the argument serves to indicate the evil in the case and its danger for France. Let us now turn to each of these writings.

Many Jews know something about Émile Zola's 1898 newspaper article, "*J'accuse*."¹ This legalistic, but very literary, document exposed one by one each of the judicial crimes of the military Court Martial involved in the 1894 Dreyfus trial. However, few know of Zola's articles and pamphlets that preceded "*J'accuse*" at the end of 1897. They were the first outbursts of his moral outrage at the injustice rendered to this French officer simply because he was Jewish.

These works are Zola's exhortation to the conscience of France. Although not written in the form of a dialogue, because there is no riposte, they are written to that large, almost abstract, body called "France." Without invoking God, but reason alone, Zola implores his readers to return to an ethical way of thinking and acting, all in the name of truth, benevolence, and justice. His whistle-blowing is an accusation of the powers that be—in this case, the military Court Martial. Jewish thinking about ethics would encourage this kind of moral outrage to and overt exposure of criminal behavior, even on the part of the highest court of the land.

Background History to Zola's 1897 Whistle-Blowing

In 1897, Zola joined other notables (such as Senator Scheurer-Kestner) who supported Dreyfus' defense. Their efforts had already stimulated a

vicious reaction among pro-clerical, pro-military newspapers that labeled “the traitor Jew” Dreyfus a Judas Iscariot who had sold his loyalty to country and deserved to be rotting in solitary confinement on Devil’s Island. An ongoing investigation of the judicial aspects of the case had disclosed errors in the form of misidentification of the handwriting on the critical piece of evidence—a memorandum sent to the German Embassy. Another French officer, Commandant Marie Charles Ferdinand Walsin-Esterhazy, was implicated and was to be tried by a military court on January 10, 1898.

At the end of 1897, Zola was relying on Esterhazy’s conviction to free Dreyfus. With this in mind, he began to publish the series of letters and brochures (*M. Sheurer-Kastner, The Syndicate, The Proceedings, Letter to France, Letter to the Young*).² For Zola, each was a strategic, low-intensity shot over the bow of the enemy forces, making one ethical point very strongly. The victory was considered imminent after the predicted outcome of the Esterhazy trial. Each shot was directed to a particular target, and the whole produced a very effective volley of exposure and incrimination.

Notwithstanding these publications, Esterhazy’s court martial trial ended in his acquittal, a crushing blow to the Dreyfus-Zola forces. Zola’s immediate response was to compose and publish within two days, for a public still shaken by the aftermath of this unexpected shock wave, his devastating accusation, blasting each of the members of the collusive military court for their lies, misrepresentations, dismissal of evidence, and other calumnies (“*J’accuse*,” 13 January, 1898).

This political work of art is an open letter to the President of the French Republic. It forced the government to try Zola himself for libel. This would bring the Dreyfus case out of military jurisdiction and place it squarely in the civil arena with Zola himself, the new target. At last the Affair became a matter of open, transparent, civil proceeding before a civilian jury. The beginning of the final victory was in sight! As Zola said, “Truth was finally on the march; nothing could stop it now.”

The Articles and Brochures

I will discuss only the three articles and the two brochures that preceded “*J’accuse*.” I selected and translated certain sections to show how Zola artfully focused his attacks on the various evils and injustices that he had uncovered.

These five papers tell the story of a judicial error in the Dreyfus trial, and call for public outrage to save the nation.

“*M. Scheurer-Kestner*”

“*M. Scheurer-Kestner*” tells the reader about this popular, elderly, politically untarnished Senator who was slandered by the anti-Semitic press because he had expressed concern about a judicial error in the Dreyfus trial. Zola points out the blatant stupidity of these accusations, which described Scheurer-Kestner as a mercenary sell-out to the Jewish-Protestant-Masonic cabal, despite his being an independently wealthy businessman and a great supporter of the French Army. In fact, Zola emphasizes that his decision to express public doubt was based on his independent review of the facts, and not by solicitation by the Dreyfus forces.

Zola points his finger at “brainless anti-Semitism” as the cause of public blindness to the foolishness of slandering Scheurer-Kestner’s good name:

Here we are in this terrible mess where all emotions are false and where one cannot seek justice without being treated like a senile person or one who has sold out for money. . . . The stupidest stories are written by the serious newspapers, the entire nation is stricken with madness, when only a small amount of common sense would put things back in place. . . . When Scheurer-Kestner spoke of his duty . . . he had only this to say, “I could not live with myself knowing he was innocent.” All of us, mixed up in this Affair, must say the same thing to ourselves. That we, too, would not be able to live if we did not seek justice.

“*The Proceedings*”

“*The Proceedings*” ridicules the accusation of Dreyfus’ selling out France for money, noting that he was independently wealthy and has no mercenary motive. Zola points the finger of accusation at anti-Semitism itself as the root of the evil:

The guilty party is anti-Semitism itself. This is a barbarous campaign, which I have said throws progress back 1,000 years, revolts me and insults my basic need for fraternité, my passion for tolerance, and for human emancipation. The return to religious wars, of one race killing off another, is such nonsense in our age of liberation that such movements seem imbecilic to me.

Zola concludes that after the judicial error had been revealed and published by others, the court should have been doing his work for him—that is, convicting Esterhazy.

“*The Syndicate*”

In “*The Syndicate*” Zola makes his point again using the technique of ridicule. He mocks the popular opinion that there is a rich Jewish conspiracy that will pay to protect Dreyfus. He describes what this syndicate, this conspiracy, would look like, who would be part of it, and how they might be coerced to falsify truth. This is a satirical *reductio ad absurdum*.

Speaking as if he were in favor of the alleged syndicate, Zola says,

The traitor was judged by a military court. He is responsible not just for the present treachery but for all past historical examples that have brought defeat on the French nation (this assumes that our army could only be defeated by internal treachery). So, Dreyfus is also responsible for the defeat of France in 1870. Dreyfus is an abominable shame for the Army because he is of the race that sold his God. By this token, his family, being Jewish, is also guilty. All Jews are guilty in this Affair. The proof is that his family is spending money to save his name and to expose the French army to slander. Since they have brought witnesses with good character and reputation, they must have spent large sums of money because there is limitless money in the Jewish cabal.

Here, Zola, emphasizes his own objective, ethically impeccable, position in the Affair. He states that he has no close Jewish friends, and wants to treat Dreyfus with a calm, objective reasonableness—for example,

I, Zola, talk about the Jews calmly because I neither hate nor love them. Indeed I have no intimate friends among them. For me they are only men, but that is enough to protect them from injustice. So, if there is a syndicate that is organized to save an innocent prisoner and expose a judicial error on the part of the military High Command, then I too, Émile Zola, want to be part of it.

“*Letter to France*”

This is Zola’s call to the conscience of France to do something to oppose evil and injustice. He tells his readers not to believe the lies about a conspiracy.

How have the good and humble people of the provinces been swayed by the righteous lies of the reactionary press? They are simply not capable of weighing the questions we put before them and they believe what they read. Why do they get sucked into the fear, intolerance, and hate so they will refuse to listen to the argument that a condemned innocent man might be suffering his agony for a crime he did not commit?

I am trying to warn you of the gravity of the error, of the power of the tempest that will follow. What is happening is outright duplicity and stupidity, enough to make an honest reader very angry. Any child can see that the memorandum and Esterhazy's handwriting sample are one and the same. If the conviction of Dreyfus was made on the basis of showing that his handwriting was on the memorandum, and if now, it has been shown that it is not, does his release not follow immediately? Why is the court sitting again if not to decide on this question alone? Is it only sitting to make another point of fact—that it, the court, is and was correct, even though this conclusion is based on more lies? Is this why we are seeing so many lies piled up over the issue of the memorandum, which is, when all is said and done, the whole Affair itself? . . . But the facts are worse, there are a collection of serious symptoms for those who know, see, and can judge what is happening to you. The Dreyfus Affair is not just a deplorable incident . . . it has affected your behavior and your health. You know how someone goes about looking healthy, but suddenly, little eruptions are seen on his skin: one can see death in the process. The political and social poisoning is seen on your face.

Zola is aware of a deep love of dictatorship in the French soul:

I see here an unconscious return to military dictatorship. This is not republican behavior; you seem ready to fall in love with the first king who presents himself before you. No, it is not the army you care about; it is the general you want in your bed, again.

He admonishes the return to medieval intolerance:

Where are you headed, France? Back to the Church, back to the medieval past, one of theocracy and intolerance that your children fought to vanquish with their blood. Today the tactic of anti-Semitism is very simple. The Church tried in vain to bring people together as working-man societies, pilgrimages, but could not lead them back to the altar. It was a fact. The Churches were empty; people would no longer go and no longer believed. So, circumstances permitted the kindling in the people of anti-Semitic rage, and poisoned them with this fanaticism, pushing them into the streets, crying 'Down with the Jews. Kill the Jews.'

“Letter to the Young”

This is an emotional exhortation to the future, to the passionate twenty-year-olds who bring out Zola’s memory of his own youthful energies and his fantasies of righting all wrongs in an unjust world. Again he makes an explosive, violent attack against Church anti-Semitism as a “cynical, brutal plan to bring the disenchanted Catholic French public back to the Mass.” He then repeats the simple facts of the case.

Look at the Dreyfus Affair and the simple facts. A man is condemned on the basis of handwriting on a memorandum. He is now rotting on a desert island subjected to the world’s worst tortures. He would be there for good if a man of integrity, reexamining the facts of the matter, did not have grave doubts that afflicted his conscience. So a judicial error was claimed, and now the process of working that out is ongoing, slowly, systematically, and a new trial is in process, concerning another person whose handwriting seems so identical that a two-year-old child could see the similarity without having to call in experts. If he is convicted, the matter will be put to rest, and Dreyfus will be freed and the other will take his place.

He closes by again raising the danger of anti-Semitism:

But look at the harmful quality of anti-Semitism. Look at the Affair. Can there be young anti-Semites? Can such poison obscure the clear reason of the young mind? Can the poison of the press control them?

Zola is asking the youth if they will accept anti-Semitism in the new century and if they will poison themselves and their nation with it.

He closes with a prophetic tone:

Oh, young people, our youth, I beg you to think of the task ahead. You are the future working class, you are those who will govern the future assemblies of people, we have deep faith in you, you will resolve the problems of truth and justice we have left for you. . . . We only ask that you open your minds and be more generous than even we were toward the lives that will be lived, by your efforts entirely placed in work, fecundity and working the earth, from which shall bloom forth the overflowing harvest of joy under the shining sun.³

The Ethical Dilemma

What can we learn from these examples of Zola’s moral outrage and whistle-blowing?

On a political level, media exposure can be effective in calling attention to an abuse, a wrongdoing, a criminal act, or a judicial error. There are examples in recent American history. There is the courageous journalism of Bob Woodward and Carl Bernstein in the Watergate Affair that led to the resignation of a U.S. President. There were many who wrote and spoke out about abuses in the South during early school integration. They stimulated others to sacrifice personal comfort and safety to participate in bus rides and marches into the land of Jim Crow. There are many other examples.

On an ethical level, Zola's whistle-blowing relies on reason for its moral authority. Zola, like Enlightenment thinkers, does not invoke God but only the forces of reason—that is, the ideals of truth and justice. We must do what is right because it is right. The reward for doing right will be its own reward. In his view, the prosperity or the degradation of the French nation is at stake.

How can ethical responses be expected from those who have opposing beliefs and feelings? What Zola calls truth and justice is not what his opponents see as truth and justice.

Even if the readers find that Zola's arguments are valid and see that Dreyfus has been convicted mistakenly, that Esterhazy is guilty, and that anti-Semitism is the evil force, why would they expect a change on the part of those who believe differently? Equally passionately, the anti-Dreyfusard coalition believed that Dreyfus had sold France to the enemy and that the pride and security of the nation was at stake. Is Zola's expression of moral outrage not just another example of preaching to the converted? Does humanity not need the authority of some force, other than reason alone, to convince others of the righteousness of an ethical position?

Is a religious ethic necessary? Must we follow God's commandments to accomplish our daily ethical goals and to be sure that we are following the higher (divine) law? Must we seek a reward from God when we pray that evil and injustice be overcome? If the court in question were the highest religious court representing the Law of God on earth, would we be able to encourage a Jewish Émile Zola, an individual in the Jewish community, to rebuke an unjust, perhaps criminal, decision? Could that individual Jew blow his whistle to expose it? What does halakha say about this? Does my using Zola and the French high military court serve as a valid model in the discussion of rebuke and similar Jewish ideas?

I have been taught, by a respected rosh yeshiva, that an individual outside the court is commanded to expose injustice, even when committed by highly learned scholars. If the court were to commit an error leading to an injustice, the individual would be obliged to expose and to rebuke it. One must not accept wrong-doing in any form without a reaction. One must not do business with someone who is fraudulent, lying, and hypocritical.

This lesson can be extended to individual American Jewish citizens faced with injustice in daily personal and communal life. They should feel that the reward of doing a good act, of which appropriate whistle-blowing is an example, is the very act of doing the right thing.

Our children should be taught this mitzvah at home and in the classroom. But the problem is to know how to teach them to speak up bravely to expose injustice, lying, and hypocrisy. The individual, child or adult, runs the risk of mockery, humiliation, and ostracism by his peers.

The classroom might take suitable models from secular life as well as from Tanakh. This combined approach can be an effective way to teach ethical principles. One can examine the relative importance of religious belief to the reasonableness of daily thinking and action. Zola's relying on the authority of reason alone is one such example.

More intense classroom instruction about the Dreyfus Affair itself might be useful to students in the twenty-first century. In this context, one could have lessons from the life of the Jewish communal leader, Rabbi Zadoc Khan, during the Dreyfus Affair. In that way, one could examine critically the leadership roles in the Parisian Jewish community during that particular crisis.⁴ French anti-Semitism around the Dreyfus Affair could be integrated into the unfolding historical background of the Shoah, a most extreme example of evil and injustice in Jewish (and human) history. Using that approach one could demonstrate convincingly that the principle of early exposure of evil is preferable to accepting and suffering its ultimate consequences.

By studying and discussing the Shoah scientifically we could determine if religious Jews could and would accept a demystification of the nature of catastrophic evil. We might be able to learn something more by examining the Shoah from socio-psychological standpoints, human perspectives, without demeaning its Jewish significance or necessitating God's presence (or absence) in it.⁵ This approach shifts the focus from God to humans. Would it be effective and acceptable to teach children that

prayer does not consist wholly of beseeching God for favors but also of beseeching oneself to make the choices that will enable one's prayers to become realized? Such an approach would include the principle of whistle-blowing. In this way, Zola's example would teach our children that a society perverting justice, not actively helping the plight of the poor and downtrodden, and losing its focus of national purpose, cannot endure. This was Zola's message in his 1897 writings and was also the message transmitted in much of his masterful fiction.

Whistle-blowing in our daily professional life is a real issue. Examples of purposeful misrepresentation, hypocrisy, and malfeasance can be found everywhere. These are problems for individual conscience to solve when confronting injustice and evil. Can we rely on our own conscience to choose correctly and to regulate the personal impulses that might drive ourselves or others to commit unfair, unjust, and even criminal actions?

I once heard a talk by someone in the world of business and finance, in which he explained that regulation was unjustified because "only Hashem should regulate our moral decisions," including those made in business." If God were the only regulator, I would ask how it would be possible for human beings to expose and prevent future Madoff-type scandals, prime mortgage crises, abuse in some yeshivas, and other tragic examples of wrong-doing. What kind of external human regulation is justified to help the function of individual conscience? When is whistle-blowing to be encouraged, when not?

As a physician, I am concerned with the ethics of colleagues and students. I would like to teach a professionalism that places the patient's interest above one's own. This would include rebuke by peers and superiors for behaviors that deviate from accepted professional standards.

The current dilemma in health-care practice and reform is an example of an ethical conflict between professional interests of physicians and those of the insurance industry that has become the medical paymaster-gatekeeper. This agency function has evolved to contain costs and guarantee profits for the paymaster-gatekeeper.

The conflict arises from the fact that professionalism for physicians places patients' interests above all else. The complete care of sick human beings is a responsibility that often goes beyond reasonable demands on time. The professional interest of the insurance industry is to control risk and to maintain profit.

For the caring physician, this conflict produces an injustice to the patient and a misrepresentation of fact, all to the detriment of an effective system of medical care. The ethical physician is obliged to rebuke both, to blow the whistle, to become engaged outside the confines of his office. It is unfortunate that cost-containment and other aspects of caring for patients are not discussed in the arena of ethics, but rather, in political and economic ones, where the ethical parameters of the issue are rarely brought to light. In the ongoing health-care reform debate, the ethical issues cannot be dissociated from the bottom-line issues relating to cost, profit, and control of the medical profession.

We are left with the gnawing question of how and when we, as ethical business, medical, or other professionals, and as general members of a community, should engage in exposing these things in daily life without being vengeful, excessively morally self-righteous, or simply ineffectual. This kind of behavior will always be difficult, soul-searching, and ultimately, unpopular and possibly harmful to one's self-interest. Zola himself was the butt of unseemly jokes, posters, and newspaper attacks. His ultimate death by asphyxiation in his own house was most likely a premeditated act by his political enemies.

How do we teach these moral lessons to our children, and how should the schools that we support teach them to our community's children? Perhaps Zola's 100-year-old exhortation to France can be understood by today's yeshiva children vis-à-vis current problems in their own lives. Zola's engagement in the search for truth and justice might be incorporated into the school curriculum. The reading of normative literature can be an excellent model for the discussion of the kinds of questions I have raised. By using a set of secular, ethical writings as models, I have attempted to link a religious discussion of ethical and moral problems to a true historical event.

I would close by recalling the resonance of Zola's voice in our ears: "Truth is on the march, nothing can stop it now." His exhortation is similar to Jeremiah's exhortation to the Jewish people (9:22–23) to emulate the attributes of the ". . . Eternal, who exercises mercy, justice, and righteousness on earth; For in these things I delight, says the Eternal."

NOTES

1. "Lettre à M. Felix Faure, Président de la République" was the signed newspaper article published on January 13, 1898, in *L'Aurore*, with the block letter headline "J'ACCUSE"—that is, "I ACCUSE" each of the malefactors in the Dreyfus case. Subsequently, it has become known by its two-word title.
2. The three newspaper articles were published in *Le Figaro* on November 25, December 1, and December 5, 1897. The brochures were published as independent documents on December 14, 1897, and January 6, 1898.
3. These ideas recur in Émile Zola's fiction, especially in his utopian novels that follow the *Rougon-Macquart* volumes after 1880.
4. Thanks to my friends, Emeritus Professor Henri Mitterand of Columbia University and the Sorbonne, and Rabbi Stephen Berkowitz of the Liberal Jewish Synagogue of Paris, for their directing me to published studies about Rabbi Zadoc Kahn.
5. I helped to organize a colloquium about a particular new Holocaust novel by a young French-American Jewish author, Jonathan Littell. This took place at Hebrew University, Jerusalem, in June, 2009. Please see my comments at the web site of the colloquium under "Afterview" (<http://bienveillantes.huji.ac.il/>).

How We Judge the Judges

MAIMON SCHWARZSCHILD

(Maimon Schwarzschild is Professor of Law at the University of San Diego. In 2009, he was a Visiting Professor on the Law Faculty at the Hebrew University in Jerusalem.)

How does the importance of personal character, the ethical quality of the individual, compare as between a secular judge—say a U.S. federal judge or a state court judge—and a religious authority, specifically a rabbinic leader or decisor? To put the question a little more narrowly, how much does a person's moral character count, both in theory and as a practical matter, in attaining and keeping such a position?

An American judge and a rabbinical authority are not strictly comparable, of course. There are obvious differences between the two roles. But if there is a secular authority to which a rabbi is most comparable, especially a rabbi or rosh yeshivah whose rulings are influential among halakhically practicing Jews, it is perhaps the judge. In the American system, it is a commonplace—oversimplified of course, but broadly true—that the legislature makes the law, the executive enforces the law, but the judiciary interprets the law. A rabbi who is considered a halakhic authority or decisor likewise—at least somewhat likewise—interprets and adjudicates Jewish law, albeit usually not in the setting of a formal court or Bet Din.

It is clear that such a rabbi is expected to be a morally exemplary person, even to be a kind of living ideal, whereas what is typically expected of a secular judge is much more limited. The reason is partly that a rabbi is a religious leader as well as a legal authority, and as in any religion, expected to be a worthy example and instructor.¹ But beyond that, it seems to me that there are differences in the nature and institutions of Jewish and secular law that go far toward explaining why moral character

looms larger for rabbinic authorities than for the judiciary of a secular, liberal state. The differing expectations seem worth exploring for their own sake, and also for what they illustrate about secular and Jewish law as systems and ways of life.

There are explicit and implicit professional and personal qualifications for becoming an American judge, but the formal requirements are fairly simple. A Supreme Court justice or federal judge is nominated by the President and must be confirmed by majority vote in the U.S. Senate. There is no requirement that nominees must be lawyers, although in practice they always are. Once confirmed, they enjoy life tenure, subject to impeachment and removal for bad behavior. Throughout most of American history, the personal character of nominees usually received little or no explicit scrutiny by the Senate. Supreme Court nominees, for example, never appeared in person before the Senate until Harlan Fiske Stone was summoned before the Judiciary Committee in 1925, and personal appearance at a confirmation hearing has only been routine since 1955. Of the thousands of Supreme Court Justices and federal judges since the country was founded, only 12 have ever been impeached, and only six convicted and removed—most recently Alcee Hastings, a federal judge in Florida who was removed in 1989 for taking \$150,000 in bribes in exchange for sentencing leniency, and who is now a member of Congress.

Throughout American history, Supreme Court nominees have sometimes been rejected by the Senate, but almost always for political reasons, and until very recently, almost never with any suggestion that the personal character of the nominee was in question. (Until the 1980s, nominees to federal judicial posts below the Supreme Court were almost invariably confirmed.) Supreme Court and lower federal court nominees were commonly confirmed by unanimous or virtually unanimous votes: as recently as 1993 Ruth Bader Ginsburg was confirmed 96–3, and Antonin Scalia was confirmed 98–0 in 1986.

Political patronage traditionally played a big role in federal judicial nominations, even nominations to the Supreme Court. True, very few federal judges have been the subject of public scandal, but in terms of their personal character it would be fair to say that the “ethical average” has probably not been much different from that of successful American lawyers generally—nominees to federal judgeships typically being successful lawyers in good political standing with a U.S. Senator of the President’s party.

Some Supreme Court justices have surely been below the ethical average. William O. Douglas, a notable liberal and the longest-serving justice in the history of the Court, is described even by his admirers and political sympathizers as a man of “egregious personal flaws”: He drank heavily, treated his wives and children badly, and behaved sourly or worse to almost all who came in contact with him.² James McReynolds, a right-wing Justice who opposed the New Deal, was at least equally irascible, petty, and unpleasant. To round out his charms, McReynolds was also an anti-Semite who detested the Court’s Jewish justices and refused to associate with them.³

Some of the greatest American judges, to be sure, have been people of notable personal character, and this undoubtedly contributed to their authority as jurists. Oliver Wendell Holmes, for example, was a remarkable human being: He had been a Union soldier in the Civil War; he continued to think of himself as a soldier throughout his long life; and he was as tough-minded, and as intellectually curious, as he had been brave physically. He was not what one would call an ethical giant in any warm-hearted or compassionate sense, but he was a man of great moral strength. Benjamin Cardozo was a gentler spirit than Holmes. He is described as “witty, sweet-tempered, gentle, deferential to colleagues, legislators, and especially scholars, and as self-doubting as a judicial saint can be.”⁴ Louis Brandeis, for his part, had a self-conscious and earnest moral code, identified in his own mind with Jews of a refined type whom he called *unser eins*—descendants, as he was, of German-Jewish immigrants whose ancestors had been Frankists, followers of the pseudo-messiah Jacob Frank.⁵ Perhaps ironically, Brandeis’s nomination to the Supreme Court provoked one of the most bitter confirmation battles in American history. He was opposed as a radical and hence temperamentally unsuitable—and he was eventually confirmed by a narrow vote only after President Woodrow Wilson personally vouched for his character as a man “imbued to the very heart with our American ideals of justice.”

The struggle that Brandeis faced over confirmation was very unusual in its time, but in the past 25 years, nominations to the Supreme Court, and to the lower federal courts as well, have met growing opposition, in a polarized, often far-from-genteel atmosphere. It is no coincidence that this has happened as the courts have greatly increased their sway over American life, handing down broad rulings on issues such as abortion, sexuality, end-

of-life questions, and much else. As the courts' sphere of influence grows and there appear to be fewer limits on judicial policy-making, it becomes more important—more worth fighting over—who the judges and justices shall be. The new, contentious era began, in a sense, with the successful left-liberal campaign against Robert Bork's nomination to the Supreme Court in 1987. Bork was opposed for his legal and constitutional views, but he was also implicitly portrayed as arrogant, uncaring, and cold-hearted. Several other confirmation battles raised questions of ethics or character: Douglas Ginsburg withdrew from consideration for the Supreme Court because it was disclosed that he had smoked marijuana on several occasions in younger years; Clarence Thomas was luridly accused of various personal flaws and offences, although he was confirmed in the end.

For the most part, however, battles over Supreme Court appointments are still almost entirely about the nominees' views, not about their characters. And although appointments to lower federal judgeships have recently met more resistance than ever before, it generally takes the form of procedural delay or obstruction, not an inquiry into personal conduct and character. There is still a kind of common understanding, albeit occasionally disregarded, that nominees to the federal bench will face scrutiny of their views, ideas, and public decisions, but not of their souls.

As for state court judges, who make up the great majority of the American judiciary, most are elected (or initially appointed for a term of years but retained, or not, by popular vote). The Code of Judicial Conduct, adopted by most states, concentrates on professional conduct and private conduct that might directly affect a person's judicial duties or reputation, such as breaking the law or having improper conflicts of interest. (Judges, it is true, are broadly enjoined to avoid impropriety and the appearance of impropriety in all activities, and they are barred from joining discriminatory clubs.) A recent study describes elected judges as "more politically involved, more locally connected, more temporary, and less well-educated... more like politicians and less like professionals."⁶ In their personal character, state court judges probably resemble, on average, the moderately successful local lawyers and politicians from among whom they are drawn. Most of them are undoubtedly worthy people, but there is no expectation that they should be moral virtuosi. There is reason to hope that not too many resemble John F. Hylan, the Tammany politician whom Jimmy Walker defeated for Mayor of New York and whose sanity

Walker openly questioned during the campaign: After the election, Walker appointed Hylan to the Children's Court, and when queried about it, memorably replied, "I wanted the children to be judged by their peer."

Where the great rabbinical authorities are concerned, by contrast, a very lofty personal, ethical character has traditionally been expected, or at least demanded. This traces as far back as the strong emphasis that Judaism always placed on the personal attributes of Moses—*Moshe Rabbenu*—although the precise nature of Moses' character has been a subject of debate. Maimonides insists on the perfection of Moses' character: "No defect, great or small, mingles itself with him."⁷ Other rabbinic traditions, however, attributed weaknesses to Moses, such as slowness of speech, impulsiveness (as when he struck the rock), even occasional sin. There is a legend that Moses acknowledged his own character to be naturally capricious, greedy, arrogant, and worse—that only by great self-discipline was he able to overcome these evil inclinations.⁸

At any rate, Judaism has always insisted on the ethical qualities as well as on the intellectual attainments of a *talmid haham*, a scholar eligible for rabbinic authority. *Mishna Avot* (Ethics of the Fathers) is largely about the personal qualities of a scholar, and often explicitly about the character of an adjudicator.⁹ There are frequent allusions throughout the Talmud to the human qualities required of a religious authority: "If the teacher resembles an angel of God, then let [people] seek Torah from his mouth, but if not, then let them not seek Torah from his mouth."¹⁰ After enumerating all the qualities a scholar must have to be eligible for the Great Sanhedrin, Maimonides lists the minimum requirements even for a member of a local Bet Din of three judges: "Each one must have these qualities: wisdom, humility, fear [of sin], hatred of money, love of truth, and love of his fellow human beings."¹¹

In recent times, the Mussar movement has put renewed emphasis not only on studying ethical texts, such as those of R. Moshe Haim Luzzato, R. Moses ben Jacob Cordovero, and R. Israel Salanter, but also on formal and informal activities aimed at building a proper religious and ethical character.¹² Sympathetic biographies of leading rabbis almost invariably stress the admirable personal qualities, if not the saintliness, of the rabbi in question.¹³ To be sure, sublime personal morality might sometimes be attributed to a rabbi who does not in fact possess it, or who at least does not always display it. No doubt, there has always been a range of person-

alities and of character types among rabbinical authorities, even among those of the highest standing. But both in principle and in practice, how such a rabbi is seen to treat other human beings, how he raises his children, whether he can win the affection as well as the loyalty of his community—these are important to his standing and his influence, perhaps as important as his Jewish scholarship and his commitment to the Jewish people in general, and far more important than such questions would typically be for a member of the secular judiciary.

Why does moral character loom larger for attaining rabbinical authority than for becoming a secular judge? Part of the answer is no doubt sociological or demographic: Jewish communities are smaller than modern secular societies, and hence—as in a village—more able, and perhaps more motivated, to probe the personal character of their leaders. But it seems to me that there are deeper reasons, rooted in the nature of the Jewish and secular legal systems respectively, and their institutions.

First, the scope of law in a secular, liberal society is limited. A theory of this limitation is set out by John Stuart Mill in his short but enormously influential book *On Liberty*. Mill argues that freedom of thought and freedom of argument are essential to arriving at better ideas and better ways of life, and that there cannot readily be freedom of thought without considerable human liberty in general. Liberty, in turn, means that a person's acts are properly subject to legal restraint only when those acts damage other people or their legitimate interests. When a person's acts concern only himself or herself, and do no damage to the legitimate interests of others, then neither the law, nor perhaps even any informal social pressure, ought to intrude on the person's freedom.

It is a standard objection to Mill that any human action stands to affect the interests of others. Immoral acts, for example, even if done in private and even if they create no risk other than to the actor, are still compromising to others. If the person's immorality harms himself or herself, then others who may depend on the person, or who may have to support the person in the event of any disability, will be worse off; and in any event, the moral ethos of society is liable to suffer from the mere knowledge that immoral acts are being perpetrated. *On Liberty* acknowledges this sort of objection, but Mill insists that "harm to others" ought to be defined narrowly—essentially as physical harm or direct harm to the property of others—in the interest of vindicating human liberty.

Modern secular societies, broadly along the lines traced by Mill, tend to limit the reach of the law to public-regarding interests, with a considerable zone of private choice exempt from legal restriction. What is considered public-regarding, and hence open to regulation, and what is considered private and hence no business of the law, certainly varies somewhat from time to time and from place to place. The law intrudes much less than it used to in adult sexual behavior, but still forbids polygamy and in most states declines to recognize gay marriage; the drug laws are very much in force, although marijuana has been virtually decriminalized, at least in practice, in many places; tobacco, on the other hand, is subject to more restriction than ever. Child-rearing is perhaps more intruded-upon than it used to be, especially if one's family attracts the attentions of the social welfare bureaucracy. But broad areas of personal and social life—what one eats, how one dresses, how one conducts oneself with others, what one's religious beliefs and practices are, if any—these have long been exempt from legal control, within generous limits, in every modern, secular society. If it were otherwise, the society would not be a liberal one.

John Locke, Mill's precursor and a founding thinker of liberalism, argued for the fundamental importance of separation of church and state, and hence for a limit on the reach of the state and the law: "[T]he Church itself is a thing absolutely separate and distinct from the Commonwealth... He jumbles Heaven and Earth together, the things most remote and opposite, who mixes these two Societies; which are in their Original, End, Business, and in every thing, perfectly distinct, and infinitely different from each other."¹⁴ Locke writes that there is a single legitimate exception to this categorical separation of state and religion, namely "the Commonwealth of the Jews, [which,] different in that from all others, was an absolute Theocracy. . . . The Laws established there concerning the Worship of One Invisible Deity, were the Civil Laws of that People, and a part of their Political Government; in which God himself was the Legislator," and hence there was not, nor could there be, "any difference between that Commonwealth and the Church."¹⁵

Locke was right about Jewish law to this extent: The Torah governs all, or almost all, aspects of life, including many actions and interactions that are outside the scope of liberal, secular law. As one writer recently put it, "the day-to-day interactions between people, the treatment of one

another in mundane conversation, in walking in the street, in traveling on a bus, or waiting in line to be served in a store, are no less the home of halakha than are the activities of the synagogue or the kitchen, the study hall or the hospital bed.”¹⁶

An authoritative interpreter or decisor of Jewish law, therefore, has jurisdiction over a much greater part of life than a secular judge. True, in the modern world a rabbi does not wield the coercive power of the state. But for anyone who accepts the rabbi’s authority, his rulings are liable to address areas of concern, including very intimate ones, where no civil court—or any other public body—would ever intervene. Given the breadth of the rabbi’s authority, it is only reasonable that his followers should take a deep interest in his character, and that they should want to be confident of the ethical stature of a person who exercises such spiritual authority in their lives.

There is a second consideration that puts a premium on the rabbi’s personal character, relative to the secular judge. The power of an American judge is hedged in by an elaborate institutional framework of constraints, whereas there are fewer such constraints, at least fewer formal constraints, on a rabbinic decisor. American government is based on separation of powers: a principle first theorized by Montesquieu, who believed or imagined that eighteenth-century England exemplified it, and by Locke; and actually put into practice under the American Constitution. The judiciary is merely one branch of American government: the “least dangerous branch,” or so Alexander Hamilton called it in *Federalist #78*. The courts are checked and balanced by the legislative and executive branches, which have a role—in principle the principal role—in law making and the setting of public policy. There is a long-standing doctrine or norm of judicial restraint, sometimes honored in the breach, to be sure, but rooted in the idea that courts are less answerable to the people through the democratic process than the “representative” branches, and hence that judges ought to be careful not to intrude on legitimate democratic prerogatives.

Moreover, there is a formal hierarchy of courts, and decisions by judges lower on the totem pole are subject to appeal and correction by higher tribunals. A trial judge can be reversed on appeal; and appellate judges—who always sit on multi-judge panels—can be outvoted by their colleagues. State court judges, for their part, are not only subject to appellate review, but in most states they can also be removed from office by the voters.

Federalism itself is yet another check and balance. Neither the national government and its federal courts nor the state governments and their courts are all-powerful. Finally, if the people are dissatisfied with the judges' interpretation of the law, the people have the power to change the laws that the courts interpret and apply—through new legislation, or if necessary, by Constitutional amendment.

Under Jewish law, there are fewer such institutional constraints. There is no “separation of powers”: no legislative or executive branch. There are, in general, no appellate courts.¹⁷ This is not to say that there are no checks and balances in Jewish life. Throughout Jewish history there has been a complex process of “legislation”—of adaptation and reform—within the halakhic system.¹⁸ There is the principle within the halakha itself that “One cannot enact an ordinance unless the majority of the community will observe it.”¹⁹ There is, very importantly, in the decentralized nature of Jewish life—a kind of federalism. Every Jewish community chooses its own rabbis, and at least in modern times, it is fair to say that every Jew ultimately chooses his or her own rabbi. (This is “ultimately” so, but there are considerable barriers—material, psychic, and spiritual—against an individual's choosing a new rabbi if this entails abandoning an established community of which one is a part.) The customs (*minhagim*) both of the Jewish people as a whole and of particular Jewish communities have considerable force of law as a matter of halakha. In all these ways and more, rabbinic rulings are not made in isolation. As R. Aharon Lichtenstein puts it about the corpus of halakhic Responsa, “the classic *meshivim* are likely to be among the more lenient, inasmuch as inquirers are disinclined to turn to *mahamirim*.”²⁰

Yet although there are checks and balances to rabbinic leadership, they are for the most part informal. Jewish authority is not bounded by what might be called the framework of mistrust that limits the power of the American judiciary. The moral character of rabbinical leaders, in whom Jewish communities confide, therefore takes on special importance. And in fact, Jewish communities have always “tested” a potential rabbi, authority, or decisor, not only for learning but also for piety, personal adherence to a demanding halakhic way of life, and personal character generally. In the absence of an elaborate system of institutional checks and balances, it could hardly be otherwise.

All of this has a further implication. It is a commonplace that the trend

in much of the Orthodox world in recent decades has been toward greater rigor in religious observance and greater strictness—or caution, or antipathy to innovation—in interpretation of Jewish law. The trend is palpable both in the Orthodox rabbinical leadership, and in the Orthodox communities at large. It affects not only ritual questions, but also—among many others—such issues as conversion to Judaism, the problem of *agunot*, and the extent to which Orthodox Jews ought to conform to rabbinic opinion (*da'at torah*) on questions that are not strictly legal. The reasons for the trend are no doubt complex: R. Haym Soloveitchik has penetratingly explored some of them.²¹ The trend is an ironic reversal, in a sense, of R. Aharon Lichtenstein's observation that classical Responsa incline toward leniency because through most of Jewish history legal rulings would more often be sought from authorities known or believed to be lenient.

But given today's trends, if personal character is a qualification for any rabbinic leader or decisor, it is apt to be all the more important for a decisor who would challenge the prevailing trends. Simply put, the standards are always higher for anyone who would swim against the current. To rule “leniently” or innovatively, especially on issues felt to be of defining religious importance, a decisor would surely need strong Jewish scholarship but also strong personal authority, a strong ethical character, at least if such rulings are to hope for acceptance in today's Orthodox world. (In old-fashioned English, “a character” meant both what we mean by character, and also “reputation” and “personal recommendation.”)

Rabbinic leaders and decisors throughout Jewish history have taken a wide variety of views on almost every debatable question of Jewish law. Whatever the rabbis' views on legal and religious questions, the Jewish world has always expected that its rabbis should be people of exemplary ethical character. This expectation flows from the fact that they are religious leaders as well as interpreters and adjudicators of Jewish law—but it also stems from the distinctive nature of Jewish law itself, the nature of its institutions, and the breadth of its command. The modern American legal system is such that judges, although they are certainly expected to be law-abiding people, need not be moral virtuosi. Even so, the personal character of some of the greatest American justices and judges has surely been important to their standing. The expectations under Jewish law are higher. Rabbi Benzion Uziel, the great Sephardic Chief Rabbi of Israel in the mid-twentieth century, summed it up eloquently: “The entire image of

Judaism is reflected in the judges of Israel, who were—and are supposed to be—the regulators standing at the rudder and the watchtower to guide the ways and to strengthen the fortifications for peace and unity, the eternal foundations of the nation of Israel and its Torah.”²²

NOTES

1. Many Jews in particular believe, whether as a matter of hope or experience, that Torah learning itself makes its possessors better, more moral people; hence the expectation that the more learned the rabbi, the loftier the ethical character.
2. David Garrow, “The Tragedy of William O. Douglas,” *The Nation*, March 27, 2003.
3. Laura Krugman Ray, “Justices At Home: Three Supreme Court Memoirs,” 101 *Michigan Law Review* 2103 (2003). Monstrous as McReynolds was, there do seem to have been (usually well-hidden) rays of kindness in his character. He privately supported 33 children left homeless in the London Blitz in 1940; he left a sizable fortune to charity; and both Holmes and Douglas, in their memoirs, report moments of goodness in him.
4. Jeffrey Rosen, “The Hopeless Moralizer,” *New York Times*, Nov. 2, 1997 (reviewing Richard Polenberg, *The World of Benjamin Cardozo*, Cambridge, Mass 1997).
5. See Melvin I. Urofsky and David W. Levy, eds., *The Family Letters of Louis D. Brandeis* (Norman, Okla. 2002).
6. Stephen J Choi, G. Mitu Gulati, Eric A. Posner, “Professionals or Politicians: The Uncertain Empirical Case for an Elected Rather Than Appointed Judiciary,” *U. of Chicago Law and Economics Working Paper* No. 357, p. 41 (August 2007).
7. *Perek Helek*, The Seventh Principle. See also *Guide* II:35 (Moses had a fully active intellect and was without physical or character blemish). See Daniel Jeremy Silver, “Moses Our Teacher Was a King” 1 *Jewish Law Annual* 123 (1978).
8. Shnayer Z. Leiman, “R. Israel Lipschutz: The Portrait of Moses,” 24 (4) *Tradition* 91 (1989). This legend may originally have been about Socrates or Aristotle, not Moses, and R. Lipschutz was criticized by other rabbis for quoting it and attributing it to Moses.
9. E.g., *Avot* 1:8, 9, 18.
10. *Hagigah* 15b; see also *Moed Kattan* 17a.
11. *Hilkhot Sanhedrin* 2:7, 8. See also *Shulhan Arukh*, *Yoreh Deah* 246:8: “A rabbi who does not go in a good path, even if he is a great scholar and the whole nation needs him, they should not learn from him until he returns to the good.”

12. Emanuel Etkes, *Rabbi Israel Salanter and the Mussar Movement* (Philadelphia 1993).
13. See Eliyahu Stern, "Modern Rabbinic Historiography and the Legacy of Elijah of Vilna," 24 (1) *Modern Judaism* 79, 82 (2004) (on the tendency of such biographies toward hagiography).
14. John Locke, *A Letter Concerning Toleration*, ed. James H. Tully, p. 33 (Indianapolis 1983).
15. *Ibid.*, p. 44.
16. Daniel Z. Feldman, *The Right and the Good*, p. xii (Northvale, NJ 1999).
17. The Israeli Chief Rabbinate has established a Supreme Rabbinical Court of Appeals. But R. David Bleich writes that the halakhic authority for appellate review is far from clear," citing the general rule "If a scholar has prohibited another scholar dare not permit." Nonetheless, R. Bleich does not entirely reject the idea of appeals under Jewish law. See J. David Bleich, *Contemporary Halakhic Problems* pp. 17–45 (New York, 1995).
18. See Menachem Elon, *Jewish Law: History, Sources, Principles* (Philadelphia 1994); Aaron M. Schreiber, *Jewish Law and Decision-Making: A Study through Time* (Philadelphia 1979).
19. *Baba Batra* 60b.
20. Aharon Lichtenstein, "The Human and Social Factor in Halakha," 36:1 *Tradition* 1, 7 (2002). R. Lichtenstein quotes R. Avraham Schapira on this point.
21. Haym Soloveitchik, "Rupture and Reconstruction: The Transformation of Contemporary Orthodoxy," 28:4 *Tradition* 64 (1994).
22. Hayyim David Halevy, "The Love of Israel as a Factor in Halakhic Decision-Making in the Works of Rabbi Benzion Uziel" (tr. Rabbi Marc D. Angel), 24:3 *Tradition* 1, 17 (1989).

Single Women Who Want to Have a Baby

YUVAL CHERLOW

(Rabbi Cherlow is Rosh Yeshiva of the Hesder Yeshiva of Petah Tikva. He wrote the following two Responsa, which appeared in Hebrew in the newsletter of Yeshivat Hesder Petah Tikvah, August 2007. He has given permission to the Institute for Jewish Ideas and Ideals to have them translated and published in English. The following translation is by Bentsi Cohen.)

*Question to Rabbi Yuval Cherlow,
Rosh Yeshiva of the Hesder Yeshiva of Petah Tikva:*

Ask you to bravely write an answer to a question that has been disturbing me very much for quite some time. I am a thirty-six-year-old woman, rather pretty, educated, and well taken care of, who has been attempting for over fifteen years to get married, but to no avail. . . .

I want to have a child!!! I dream about having a baby all the time—I want a child!!!

I beg of you: Please articulate for me the entire issue from the very beginning till its end, with a specific conclusion. Am I allowed to bring a child into the world, even though I am not married? Specifically, how may I have a child?

Response from Rabbi Cherlow:

I shall attempt to the best of my ability to articulate the entire matter and to include all its various considerations.

A. The fundamental principle of our existence is the complete Jewish family. The Torah has written in the story of Garden of Eden: “Therefore shall a man leave his father and his mother and cleave unto his wife, and they shall be one flesh.” Furthermore, it has taught us that all the elements of the family are concentrated in one place: Living with a mate [*shall a man leave his father and his mother*], in matrimony [*shall cleave unto his wife*] and the fertilization [*and they shall be one flesh*]. Therefore, the constant human yearning and goal is to establish a family and to give birth to children. Since the issue is already mentioned in the story of the Garden of Eden, we may learn of its high importance, and of its being the foundation of human continuity. In contrast with the culture of the world in which we live now, which is a world of taking apart and colorful reassembling, this is the stability and holiness of the Jewish family. Therefore, before considering any other option, it is essential to make every effort to establish a legal and proper family in which to give birth to children.

B. Due to the holiness of the Jewish family, there exists a deep hesitation to giving birth to children outside of such family framework that *could be established*. The rabbis integrated the mitzvah of “*be fruitful and multiply*” to the mitzvah of marriage, and they explained that is the reason why the mitzvah to get married is not an independent “stand-alone” commandment. The halakha expects people who wish to get married to build a Jewish home on the principles of concession, mutuality, respect, compromise, and acceptance.

C. When a woman reaches a point when it becomes probable that she will not be able to establish a Jewish home—despite her strong will to do so and her willingness to compromise toward that goal, coupled with the continuous ticking of her biological clock and the declining chances of giving birth—there exists a serious unresolved question that is still disputed among the halakhic authorities. Some claim that a woman’s strong wish for a child should not outweigh the significance of the holiness of the Jewish family, nor the benefit of a child to be born into a family with a father and a mother—and thus there is no way to move in this direction. Moreover, there is a social framework that one must consider as well, namely, the desire to prevent the slippery slope of the wish to give birth to children out of wedlock at much younger ages, and in fact where giving birth with no husband may become the normative or even ideal mode of

life. Sometimes, social tenets designed to protect the holiness of the Jewish family restrict the private will of the individual.

D. On the other hand, some rabbis claim that when one reaches the stage where the chances of pregnancy are about to fade, and when a person demonstrates that she did all in her power to get married but did not succeed, there is no way to prevent, halakhically, the realization of her hope to bear children. Even the Torah teaches that a childless woman may feel as if her life without children is not a life [Rachel cries to her husband, Jacob: "Give me children; if not I am a dead (woman)"]. There is no clear prohibition on a woman to give birth without first establishing a home, and one cannot enter into the issue of "the right to become pregnant," for it is an issue of human conduct that preceded the Torah, a fundamental of human existence. In fact, a woman may give birth to a child of her own with no father, and raise that child with more love and care more than would two parents in a dysfunctional family.

E. I tend to lean toward the second opinion; however, because of the serious responsibility attached to maintaining the holiness of the Jewish family, there is a need to limit that permission to women who are about thirty-seven years of age, and who have reached that age unwedded through no fault of their own. The age was arrived at from the research of the medical sciences regarding the declining chances of a woman's impregnation, which is close to the last possible deadline for it. There is no way to permit this at a younger age, but one should continue to try every way possible to establish a Jewish family [by marrying].

F. Obviously, even after the process of impregnation has been successfully completed, the woman should still attempt to establish a Jewish home [by getting married].

Ways for a Single Woman to Become Pregnant

A. With today's medical technologies, there are three main possible ways. First is the regular way, namely through a sexual relationship. On the one hand, it is the most natural and simple way to become pregnant. On the other hand, in these types of relationships there is a direct violation of Jewish holiness, that is, a premarital sexual relationship.

B. The second possibility is artificial insemination. The advantage here is that it is not a complicated medical procedure. Nevertheless, it involves some degree of discomfort, and in addition, there exists the possibility of using a relatively large amount of sperm in the process, giving rise to the issue of “wasting sperm purposelessly.”

C. The third possibility is in vitro fertilization; this too has advantages and disadvantages. The advantages are its high level of probable success, fertilization with no sexual relationship, and so forth. The main disadvantage is that it requires a medically invasive procedure with no medical cause, in an ovarian stimulation, which may lead to a hyper stimulus, and in full anesthesiology in harvesting the eggs. Of the above three ways, it appears that artificial insemination is the preferred method. As a second choice I tend to favor IVF, which has become the relative norm, better than a sexual relationship intended for the exclusive purpose of impregnation.

D. An independent question is which sperm to use. Here there are three basic choices. The first and best of them is the sperm of an identified Jew. It is assumed that we are referring to a person who will be willing to recognize the child as his own, and who reaches an agreement with the woman about the essence of such recognition. One may reach different types of agreements, some which will require nothing from the donor and/or an agreement of full partnership in caring for the child, similar to those that exist among divorced couples.

E. The second possibility is to use sperm of an anonymous donor. It is halakhically preferred to use sperm of a non-Jew, in order to avoid the need to define the child as one of unknown parentage (where we need to be concerned whether the child is illegitimate), for even though one is dealing here with a rabbinic prohibition [rather than a Torah prohibition] we observe all those prohibitions very carefully, especially when we deal with genealogy. One has to remember that according to halakha a woman may not marry an illegitimate man (a *mamzer*). Therefore, it is entirely possible to argue that by [using sperm from an anonymous Jewish donor who may be illegitimate] one may cause harm to the child who was born from the sperm of an anonymous Jew. There are several reasons to prefer a non-Jew's sperm; some of them are medical [for example, avoiding marriages between relatives]. It is indeed true that there may be a desire for the child to be born from Jewish sperm, but the halakhic preference for

non-Jewish sperm is unequivocal, and one should not use sperm of an anonymous Jew.

The above is written with a deep feeling of pain for this reality where there are women who have reached their late 30s or early 40s but did not find a way to establish a home, despite their strong wish to do so. These things are very personal, obviously, and one should not employ this route *a priori*, for it stands in clearly against the Torah's ideal goal and compromises the holiness of the Jewish family. It is self-understood that there is a long journey following the birth—raising the child lovingly and with warmth, with proper education in mitzvoth—but these are topics of their own.

In light of the many reactions to Rabbi Cherlow's first Responsum, he wrote a second Responsum on this topic:

According to our tradition, when a person enters the hall of study, he recites the prayer of Rabbi Nehunyah Ben Hakana that includes the words: "May it be thy will, Lord my God, that no stumbling-block be caused by me and that I shall not fail in matters of halakha, and that my colleagues shall rejoice in me, and that I shall not say on the defiled that it is pure and conversely, on the pure that it is defiled, and may my colleagues not err in matters of halakha so that I may rejoice in them." This prayer was not completely fulfilled in my case. Many of my colleagues did not rejoice in what I've written, and a small number even claimed that I have erred in matters of halakha and that I declared the defiled to be pure. I therefore decided to add clarifications to what I have written, and maybe the number of those who rejoice in my teaching surpass those who do not rejoice in my teaching. As previously, I pray to the Master of the Universe begging that I not fail nor err in matters of halakha, and not err in the way I write it. I predicate my response on the belief that all those who did not rejoice in my teaching had pure and worthy intentions, and their position deserves a carefully weighed response. There were almost no foolish comments nor statements that should not have been made. This issue is worthy of a serious discussion among scholars of halakha, and there are many opinions, which are not so far from each other, as I shall demonstrate, despite the clear variances among them. I wish to thank all those who responded, particularly those who disputed my arguments and required me to re-examine what I've written.

My response will deal with three subjects. The first is my ruling itself, and the decision regarding the status of she who reached the age of almost being unable to give birth to a child of her own. Second are the various considerations that may lead to a different ruling, particularly the fear of the slippery slope leading to the destruction of the institution of marriage. Third is the publication policy and public discussion of such issues. The delving into halakha should always take precedence to the issue of general publication.

Let us commence with the common denominator among all the rabbis: There is no one who disputes the idea that the Jewish family is the unique and basic holy path for a happy and complete life. That is how I started my discussion last time, and I dedicated more than a few sentences to this principle. Even beyond that, in my daily life I dedicate the majority of my time to this topic. Ten years ago, I acted as a partner in the establishment of the rabbinic association, TZOHAR, [let me clarify that TZOHAR has no common halakhic stand in this matter, and therefore let there be no doubt that my previously stated opinions do not reflect the position of TZOHAR; indeed, some of my colleagues there disagree with me]. Since then I have dedicated many days and nights facilitating the establishment of Jewish homes in accordance with the laws of Moses and Israel. I merit the [opportunity] to participate with the rest of Israel's rabbis, whose main preoccupation is to assist in establishing families, peaceful homes, avoidance of divorces, finding solutions to problems of fertility—these are an integral part of their lives. The accusations against me, claiming that I allegedly assist in the destruction of the sacredness of the Jewish family, ought to be refuted by my constant investment of time and effort in these matters. In my two sites, MORESHET and KIPAH, there are about 15,000 correspondences dealing with these issues. The majority of these correspondences are not made public due to their intimate nature. Moreover, a large share of my rabbinical work is involved with similar topics. Therefore, there is no variance between all Israel's rabbis, who see the establishment of a Jewish home as the basis of national sanctity. My previous Responsum opened with a discussion about the Jewish family and the three principles that define “complete family sanctity” according to the Bible (living with a mate, matrimony, and children).

Because of the above and due to the extreme importance of the family's sacredness in Israel, I already wrote previously that one must do all

needed in order to be married. A part of the spiritual prerequisite is to fully comprehend the deep meaning of living with a mate, the fact that none of us is perfect, and a prospective mate is also imperfect. One must convert the dreams of a charming prince or princess coming into their lives riding on a white horse, into a realistic relationship with people with positive and negative traits. One should be willing to pay some price in order to fulfill dreams, in order to build a proper Jewish family. Moreover, it should be made abundantly clear that any sexual relationship out of wedlock is strictly prohibited. I've written about this topic many times, and in the great disputation regarding immersion [in a *mikvah*] of single women, I've stated unequivocally that such action is strictly prohibited, and I find no way to permit it under any circumstances, even if it involves declaring the transgressor as deserving the punishment of "*karet*" in this context.

This position is not one of Judaism attempting to guard itself from self-destruction. It is far beyond that, and it is the radical message that the Torah projects to the entire world; it calls on us to resist the major trend of the destructive process in which we find ourselves. In today's world, the various elements of establishing a family are diverse, and what is taking place is the profane destruction and uprooting of sacredness as a basis of the family unit. We strongly deride this major destruction, and we continue to strongly adhere to what is considered to be a novel idea—the molding of the man-woman relationship into the concept of sacredness of the Jewish family unit. This holiness is one of the great messages we are spreading around the world, and we do so with strength. We believe that this special flag will redeem the world from its current destruction, and will sanctify the reality, and will return the concept of family to its proper position. These views on family are a common denominator among all the rabbis in Israel, and as much as I am aware, despite all the multitude of disputation in the rabbinical world, no rabbi disputes this.

The question that must be dealt with is one of *a posteriori* (*Bediavad*). Single women who have done all in their power in order to be true to the concept of family sacredness, and did not merit, for whatever reason, to establish a home in Israel, yet wish to experience parenthood and to raise a Jewish child—what is the law for them? I shall emphasize, particularly addressing the secular public and its criticism of what I wrote, that the intention is by no means to, Heaven forbid, bring the rabbi into the privacy of people's bedrooms. A believer incorporates in his considerations as a

vital element the spiritual and halakhic implications of his deeds. Then he turns to his rabbi, whose specialty is exactly in those domains, in order to learn how the Torah rules on these subjects. No one knows how many women are perplexed by this question; therefore, any empirical statement will be of no real value. This question is not an exclusive one to women, but to all who seek the true knowledge of the faith, because much of the spiritual world is especially built on principled inquiries on various issues. This is the essence of Torah study; we tell the yeshiva students repeatedly that we cover the entire Talmud regardless of its practical implications for actual life, exactly because of what the Torah in its entirety projects on the rabbinic personality. Therefore, this question relates not only to adult women who are frustrated because of this issue, but to all whose proper study of Torah is important.

In this *a posteriori* situation I believe that such action is permissible. From the many critics from the rabbinic world, I heard no one who claimed that this is prohibited in principle, and that there is no halakhic way for a single adult woman to give birth. I even heard the Chief Rabbi of Israel, Rabbi Amar, in a radio interview on *Kol Israel*, say that when an extraordinary situation such as this exists one must inquire of a knowledgeable authority. I must emphasize that I do not claim that Rabbi Amar has agreed with what I have said. I simply infer from his reply, as I do from all the critics, that what I said is correct regarding marital issues, there is no prohibition for an adult woman to become pregnant and give birth in a specific manner, when her goal is to merit becoming a parent.

From the wide public response to what I said, there were those who argued that one must keep in mind the child's welfare. Because of that, one should prevent a single adult woman from bearing children. There is no dispute that it is better for a child to grow up in a family with a father and a mother; to the best of my knowledge all the research agrees with that premise. However, the insertion of this argument of "the child's welfare" into this discussion constitutes a horrible slippery slope, which one must avoid at all cost, even before one commences this slide downward. I shall emphasize that I am not just talking about a potential slippery slope [which will be discussed later] but about a factual slippery slope. For if we were to incorporate the argument of "the child's welfare" in the question of child-bearing, then we will be required to investigate all the world's couples, leading to a situation where one will require a permit to bear a child.

It is possible to unequivocally determine that there are numerous couples that any child born to them may expect a miserable life. Therefore, the insertion of the argument of “the child’s welfare” in order to prevent an unwedded woman from impregnation will stand to no test. Deciding who is worthy of having a child and not, based on the argument of “the child’s welfare,” will inevitably enable a child to sue his parents for living in Tel Aviv with all its pollution, or similarly against parents who live in Hebron and bore children in a dangerous environment.

Beyond that, one may not, in the name of halakha, invoke the argument of “child’s welfare” when the concept of child’s welfare appears almost nowhere in a halakhic discussion. To remove all doubts I shall emphasize that there is no body of laws that considers the child’s welfare as explicitly as does the halakha; however, it is exceedingly difficult to find a single limitation that was placed on the parents because of the argument of “the child’s welfare.” A halakhic discussion must be conducted on the basis of a search for the truth and not be manipulative in nature. Therefore, one may not employ the argument of “the child’s welfare” in places where it is convenient and fits well *a priori*, and conversely reject it in rulings regarding issues of matrimony, such as birth. Such practice may distort the issue of family planning in certain circumstances [mistaken in our view] regarding the damage caused by families with many children and many other issues. Therefore, from the principled or from the empirical points of view, one should not regard the consideration of “child’s welfare” as an influencing argument on the discussion at hand. Whoever inserts the argument of “child’s welfare” to this discussion will cause a far greater damage to the family institution in Israel.

Similarly, it is impossible to invoke an argument against a woman as selfish in the name of halakha. Do women who wish to give birth think of themselves only? About such claims the Midrash says: “Is that the way one answers a painfully hurting woman?” Many adult women are tormented with great pain and are abused by men who string them along for a long time. They see their friends readying their children to get wedded: May we call such women selfish? Even the suggestion that their problem may be solved by adoption resembles the consolation Elkanah [gave his wife Hannah], “Am I not better to you than ten children?” His loving words did not console Hannah at all. In general, I find it difficult to comprehend how one can dare to judge those in such a terrible state and then

offer alternative suggestions, while the Torah itself describes such a state as “I am dead.”

I wish to comment here that there is a severe contradiction in many of the replies. They argue that a married woman should do everything possible and more regarding impregnation, claiming that in the end the reward exceeds the price demanded of her, and the matter is important not only from the ideological and religious aspects but also a matter of mere existence. These proponents are strict in regard to postponements of pregnancies, yet when it concerns a single woman who is tormented, all these considerations evaporate. Obviously, they claim, the answer is unequivocally that it must be prohibited. Is there any selfishness spoken about here?

In sum, I have reviewed all the arguments of those who disagreed with the essence of what I’ve written related to this matter, and I found no refutation that proves that what I have written is wrong.

Since the second part of my article—how a single woman may become pregnant—did not merit a real discussion, I shall not repeat it. I shall say only that three main arguments were advanced. The first is a medical one: There are those who think that there exists another solution, namely freezing one’s eggs [and using them at such later time when one is married]. Being a member of the Helsinki Committee for medical and genetic experimentation, I am proficient in the research subject of freezing eggs. In the last few weeks I have been dealing intensively with various aspects of egg freezing [IMF], both in slow freezing and in the emerging technologies of flash freezing. One should not deceive women in this matter. The percentage of successful impregnations via these methods is about 2 to 4 percent per egg, and the flash freezing process is still in development and is far from being a successful medical procedure. Similarly, it is a complex problem because in reality what is suggested actually tells the woman to freeze her eggs [meaning to prefer harvesting eggs by invasive methods] and to gamble. If she is lucky and gets married then it was a wise decision; if not she will be forced to be impregnated only on the day she believes all her chances to bear children have faded away. I find it very difficult to comprehend this logic. Above all, making the procedure of egg freezing into a *modus operandi* creates very serious ethical problems [maintaining one’s fertility even beyond the normal age of fertility], and my ethical stand is that one should minimize such procedures. The same argument applies to the suggestion of partial implantation of an ovary. To this day, the scientifi-

ic research is not convinced that what enables one's impregnation following a partial ovary implantation is due to the implanted portion. There are many researchers who suggest that pregnancy is enabled by the portion of the ovary that was there before. Moreover, what is the medical and halakhic rationale to employ such a drastic procedure?

The second matter regards the order of priorities in impregnation. In view of the fact that in general I tend to articulate my ideas in a very gentle and composed manner, on occasion some matters require a sharp and unequivocal statement. Therefore, I shall repeat and say, in my humble opinion, the preferred manner, from the halakha's point of view, is insemination by an identified Jewish man. This is the great fundamental of preserving the Jewish pedigree. Many commented that it is difficult to find men who would agree to this, because from the legal point of view, even if the woman is willing to waive the recognition of his fatherhood, the child may be able to sue and chances are that his claim may be granted. There are legal remedies; however, I am not the expert in this field—I am just pointing it out to prevent any stumbling blocks [for the woman]. If the above way is not feasible, the only other way is insemination using a non-Jew's sperm. Under no circumstances is one permitted to enter into a sexual relationship out of wedlock, and if due to my gentle style of expression in my previous article [it might have been understood] that there exists such a possibility, now all is crystal clear.

The suggestion that the woman should be married for one day in a fictitious marriage contradicts my halakhic way of thinking. The halakha was not designed to create fictions, even though we required them on rare and critical occasions [e.g., the permission to sell hametz before Passover]. One must minimize this method and not create situations where they should be utilized.

The second area is the fear that such a ruling, and certainly making it public, will exacerbate the deterioration of the family's sanctity in Israel. Many claimed that once women will be cognizant of this option, they will not adequately exert themselves to get married. Once this is permitted by halakha, they will prefer to bear a child via that route without paying the price of being married. Moreover, it will draw women of younger ages into this realm, since the age of 37 cannot be upheld unequivocally.

I shall emphasize at the outset that the arguments brought forth by my detractors were more than legitimate in a halakhic discussion; they were

essential arguments. The rule of halakha is not decided based upon analytical considerations alone. There are numerous considerations, and this is the reason one must support scholars of halakha so that one may learn from their method of ruling. Even in this article, I base my unequivocal rejection to premarital sexual relationships on something that is far beyond the formal aspect of the issue at hand. That is the way the halakha has been decided over the generations, and it is similarly true for this matter here. Thus, in principle, arguments such as these are truly of extreme import, and one must deal with them seriously. The question is whether, in the case we are discussing, these arguments allow an adult woman to go through a fertilization process, thus enabling her to have a child.

The confrontation with these heavily weighed arguments has to be conducted on three levels. The first level is the empirical one—would the number of women who will opt not to get married as a result of this ruling increase substantially? My position that rejects this possibility is based on the Torah itself, as it says that the origin for marriage is “It is not good that a man should be alone, I will make a help meet for him.” Similarly the principal position of the Talmud is that “It is better to dwell with a load of grief than to dwell in widowhood” (*Kiddushin* 41a). Because of my constant preoccupation with the human soul, I know the reality that the majority of single women want very much to get married. There is no real temptation to remain alone, and it is very difficult to raise a child alone. The assumption that there are many women who marry at an advanced age just to bear a child and now will refuse to be married—is an assumption whose factual support is very weak.

Concerning the biological time-clock, the age of 37 is not arbitrary, but is determined by medical research that affixed this age as the last opportunity [to bear children]. This is the basis for setting this age, and not the fear of the advancing of age. Therefore, my evaluation is that no substantial slide will occur that will draw younger women into this decision that could contribute to the slippery slope of destruction of the family unit.

The second level is the essential question of making a ruling based on the fear of a “slippery slope.” One has to recognize that invoking the argument of “slippery slope” is problematic in essence, for it injures one woman in order to prevent another one from sliding down the slope. This consideration caused our sages to minimize such decrees. One should not make a decree upon a decree, maintaining all the discussions in the Talmud

where the question of “should one decree or not decree” are present. Those who believe in the value of the argument of “slippery slope” must be very cautious from the very same concept, due to the overuse of this argument [as a basis for ruling], for if not, one will find him or herself in a state of self-contradiction. As a result, one who wishes to prohibit suffering single women from bearing children must be the one to produce proof that the usage of the argument of “slippery slope” indeed justifies such prohibition. In my humble opinion no such proof was presented.

The third level is that opposed to the prohibitive ruling are other fundamental and solid considerations, especially halakha’s recognition of the horrible suffering of the childless woman left to live alone because she has found no one with whom to build a family. Therefore, the assumption that it is better to prohibit [her from bearing children] lest this cause a deterioration of the institution of the family, as I’ve said, I strongly doubt if this is empirically correct, and it is problematic from the halakha’s point of view. Whenever a decree is issued, one must consider the price, and the price here appears very heavy, as we claimed above when we cited Rachel, our matriarch. The suffering of an unmarried woman who is also deprived from having a child is extremely severe. Therefore the ruling prohibiting women to do so is problematic in itself, and the burden of proof is on those who prohibit. One who wishes to decree that a single woman may not be allowed to bear a child, he is the one who must bring forth a proof [for his prohibition] and not the person who permits her to do so.

The most problematic issue is the publicizing of these issues. This is also the main critique that I received, and it requires me to investigate again and again the issue of making such topics public. Much of what I heard from my rabbinic colleagues has made an impact on me, and definitely shook my feeling of certainty in regard to the importance of making these issues public. The heavily weighed arguments against publicity made me reach a certain conclusion. However, prior to that decision I wish to elaborate on the arguments supporting publicizing [such issues].

I shall commence with the personal dimension. I think that one has to live a very “transparent” life in areas of principles [not in matters of personal feelings or other intimate matters]; namely, one should reduce the gap that exists between his genuine thoughts and what he says aloud; he must seek complete harmony. In my opinion, it manifests the Torah’s commandment that one should not lie, as well as the obligation that one’s yes

is true and one's no is also true. By that I see the fulfillment of the Torah's commandments "Thou shall fear no one" and on occasion "Thou shalt not follow a multitude to do evil." I see in it a wonderful tool to confront the temptation to gossip in private; one has to accustom himself to think that everything he utters in private is as if it were stated in public. By doing so, he will not permit himself to say something he ought not say; it surely is a wonderful controlling device. I resent situations where people say one thing but think something else; that is the reason I do not assign great importance when various groups of people convene, because the most important thing is not what they say in these conventions but what they say at home; and even more important is that everyone would listen to what the other one truly says at home about himself. I dislike apologetics, where people frequently are not willing to stand courageously behind the true position of the Torah; instead they present all sort of excuses. Therefore, I naturally feel that a person must truthfully tell what he thinks and not mask it.

Furthermore, our holy Torah, our sages, the composers of the codes of laws and all the books I know never hid anything. I assume that if the people who claim that one should avoid making things public had lived during the time of Moses, they would have suggested to him not to write the rules of divorce in the Torah, but to write that if a couple has marital problems they should go to their rabbi to ask for his advice, since if the divorce rules were written in the Torah it would cause the danger of a "slippery slope" toward divorce even if it were possible to save the family. Indeed, there exists in halakha a concept of "this matter should not be spoken of in front of the ignorant"; however, it is applied very rarely. All the laws of the oral Torah are fully exposed, all are accessible, and parts deal with subjects much bolder than the relatively narrow one that I dealt with in my Responsum. The clear majority [of halakhic opinion] does not require one to ask the advice of a scholar on the specific personal level, but [halakhists] write clear and concise halakha that involves the public at large, and this involves a much larger slippery slope. Thus, it is again incumbent on those who claim that one should hide the halakhic rulings from the public to prove that position.

Beyond that, the main reason we give for learning all of the disputations in the Talmud is that this is a means to attain the spirit of the Torah. The discussion of the topic of adult single women who wish to bear chil-

dren is not restricted to itself alone but has further implications. It illuminates several general rules, from the great importance of establishing a family, as well as indicating the great sensitivity the Torah demonstrates to those in great pain and suffering. This topic might turn into such a key subject on both of these aspects, and on exposing the world of halakha regarding this subject in its entirety. Finally, it may cause many more to come back in full repentance. It is so important to me to illustrate how the halakha operates with courage and integrity, and to state out loud that a *kohen* may not wed a divorcee, that intermarriage is among the most harmful acts to Jewish holiness, and that a man and a woman sign a truthful covenant with no permission of any kind to sway to one side or the other and defile the sacredness of this covenant. Conversely, one must state courageously and honestly what is permissible.

Essential is the understanding of the period in which we are living today. We are living at a time in which the control over knowledge is not the way by which one advances dear and important topics in the world. One of the main characteristics of our time is the fact that the hierarchy in the realm of knowledge is completely different. In view of that, the main struggle is not conducted by attempts at stopping or halting, but by constant nurturing of the free choice. We the rabbis from all affiliations must invest our strongest efforts to refrain from issuing decrees and building walls, to the side of strengthening and glorifying the will, to guard the words of the living God and the deep spiritual direction by which one should live. In our postmodern world, people live lives of free choice in all areas. Therefore, one cannot treat the public in general as if it was waiting for the rabbis to give permission to bear children out of wedlock. The public at large is faithful to God's words and the Torah, particularly because of the fact that they choose to do so from free will. Our major effort must be in that direction. Therefore, personally, I tend to strengthen the family unit in Israel in a way of empowerment of the free choice and not by concealing the information. Thus, I find it hard to accept the principle that there are matters one does not divulge to the public. As previously mentioned, the written law did not act that way, and the oral law too did not act that way. Thank God, we are exposed to all that our sages have written, and I find it very difficult to understand why we must start acting differently now.

The claim that making this issue public will bring about the destruction of the institution of the Jewish family unit demands a solid and true

proof, and those who criticized me did not present those proofs. The institution of the family unit has been finding itself in great trouble for a long time. Some of the reasons for this have nothing to do with what the rabbinical world does, but emanate from the general culture and from the postmodern world in which we live. However, a major portion of its weakness originates in other areas of the rabbinical world that has no bearing on the subject I discussed above. On the contrary, let the critics ask the women who are not married why are they not married in accordance to the laws of Moses and Israel, and let them discover how many of them do not get married because they are planning to bear children at an advanced age out of wedlock, and how many of them are not married for a variety of reasons which are connected to very restrictive and problematic rulings. Each couple that lives together out of wedlock without a proper Jewish wedding constitutes a painful testimony to this reality.

The strengthening of the Jewish family unit will not be attained by building higher barriers of entry. The building of the family unit is attained from the other direction, i.e., encouragement of proper free choice, education to good family life, exposure to holiness and purity, and the establishment of rabbinical authorities such as TZOHAR, which draw the nation to the sacred. In general, there is no room in our world where one can build things through the concealment of information. We need to emphasize the strength of the family unit in Israel. Part of this message is the clear spelling out of those things that are prohibited, and part of the message is the humane and compassionate approach of the halakha where it employs those considerations.

Among the many elements that contribute to the destruction of the family unit in Israel is the fact that the halakha is regarded by many as unfair and unethical. This subject is not simple at all, and it requires a thorough examination. The great message of the Jewish family unit also contains the pain sometimes caused to some individuals, such as a *kohen* who wishes to marry a divorcee, a young woman whose husband was injured and is vegetating in a hospital, and many more such cases. We need to stand strong, without apologies, and declare that indeed this is the price we are asked sometimes to pay in order to preserve our holiness and purity. Even then there are occasions where the courts find a solution. Exactly because of that, our Torah must be one of Truth. In areas where the halakha makes possible the utilization of human pity and compassion

that do not contradict the manifestation of The Master of the Universe—one must do so with all his might. I deemed it very important to publicize this issue, as an integral part of the struggle to advance the proper way of the family unit in Israel.

The weighing of all the pros and cons led me to conclude in favor of publicizing the issue. Much of what friends and colleagues have told me caused me serious inner doubt about my decision. I intend from now on to consult some of my friends before publicizing such issues. I shall not publicize issues without hearing a second opinion regarding the principle of publication. I assume that there will still be a gap between my thoughts and those of others, yet there is nothing better than having another eye looking at things. This will be the modification that I will implement following the large criticism, which consisted of many true ideas which were stated for the sake of the fear of God and the desire to correct.

Let it be the will of God that all will merit to establish a healthy, faithful, pure, and holy home in Israel, and that they should not need radical solutions in difficult circumstances, and that they should not need to take apart the three main ingredients of marriage, but will build a proper home, and that these issues that we dealt with shall remain in the realm of theory only, and that every one shall find his or her proper mate.

Ethics of the *Agunah* Problem

RACHEL LEVMORE

(*Rabbinical Court Advocate Rachel Levmore is the Coordinator for Matters of Iggun and Get-Refusal, a joint project of the Council of Young Israel Rabbis in Israel and the Jewish Agency for Israel (www.youngisraelrabbis.org.il). Rachel is one of a team that developed the Agreement for Mutual Respect. This paper was prepared as part of the author's 2004 Ph.D. dissertation in the Department of Talmud, Faculty of Jewish Studies, in Bar Ilan University, under the mentorship of Professor Daniel Sperber.*)

Introduction

It can be posited that the basis of Jewish ethics is the belief that God created the world, giving humans the gifts of time and of freedom of choice, while creating humankind in the divine image. Without freedom of choice and a sense of time, humans are but slaves, subjugated to a master who is in control of their time and actions.

Such is the *agunah*—the victim of *get*-refusal. When Jews marry in accordance with Orthodox tradition, their union cannot be dissolved through the vehicle of divorce in a manner other than the delivery of a valid *get* from the husband into the hands of the wife. In accordance with Torah law, for the *get* to be valid, ultimately it has to be given by the husband of his own free will. If it is his choice not to divorce his wife (even if she has been awarded a civil divorce in the Diaspora) he is depriving her of the choice to separate herself from her Jewish husband and forces her to maintain the status of an *eshet ish* and all that entails. Time stands still for her. She cannot forge ahead and form a new rela-

tionship with a free man—for she is not a free woman. Her biological clock continues to tick, her fertile years inevitably come to an end—while she has no opportunity to exercise her choice to bring children into the world and form a new family unit.¹ The estranged husband, through the abuse of the power given to him by Jewish law, chooses not to allow her to implement her choice of leaving him. The *agunah* is a victim of *get*-refusal, subjugated to her Jewish husband, without control of her time or life-choices.

On a rabbinic level, a man may find himself in a similar position of *get*-refusal. In accordance with *Herem D'Rabbeinu Gershom*, a woman likewise can be divorced “only in accordance with her will.”² The situation that remains is that of the necessity for agreement on both sides in order to arrange a divorce. However, negative consequences of a man ignoring rabbinic dictates while going on with his life are for all practical purposes, non-existent. If he chooses to forge a relationship with a single woman, he can form a new family unit—even marry her through *kiddushin*. Indeed, he will be transgressing *Herem D'Rabbeinu Gershom*, but his new wife and children will enjoy complete legitimacy in Jewish law.³ Because of this difference, and as a result of the higher number of women who are victims of *get*-refusal—the *iggun* problem is considered to be one of our daughters and not of our sons. It has, perhaps incorrectly, taken on the form of an issue solely of women’s status in Jewish society. In actuality, the problem of *get*-refusal is a general Jewish ethical problem, affecting both men and women. It is rooted in a disregard of *kevod haBeriyot*—a Jewish ethic of respect for all those created in the divine image.

*A Contemporary Issue*⁴

The Jewish person in today’s postmodern world lives simultaneously, to one degree or another, in two worlds—that of democratic Western values and thought while still steeped in, or at least influenced by, the 2,000-year-old Jewish tradition. These two distinct *weltanschauungs* can manifest themselves in the same individual or social group in accommodative parallelism or at times as a dichotomy.

The Orthodox Jew, more than others, is aware of this ongoing duality. It is brought into sharp relief at life-cycle events for the lay person who is an observant Jew. However, for the society of Orthodoxy as a whole, and

for given individuals as well, the potential conflict between our thousands-year-old tradition and law and our personal sensibilities erupts full force in the case of Jewish divorce.

An illustration of this point is the fact that if any Rabbinical Court today—anywhere in the world—were to rule for coercion of a *get* against a recalcitrant husband, the court could not use physical coercion under any circumstances—for fear of being charged with assault and battery. Although the halakha may allow the rabbis to beat or whip a disobedient person, human rights, societal norms, and most importantly civil law do not allow the court to do anything of the sort in the court or out of it. The civil law ties the hands of the Jewish law-makers.

During the last century, the rabbinical establishment in the Diaspora⁵ has been aware of the severity of the problem of the “modern-day *agunah*”—the victim of *get*-refusal. Individual rabbis or certain groups have attempted to address the problem.⁶ For example, in the United States the use of a prenuptial agreement for the prevention of *get*-refusal⁷ is not only accepted, but is recommended by recognized authorities within the rabbinical establishment.⁸ In December 1999, 11 roshei yeshiva of Yeshiva University’s Rabbi Isaac Elchanan Theological Seminary (RIETS) issued an open call, a “*kol koreh*,” which elucidated the *agunah* problem and called on rabbis to erase this blight on the Jewish community by means of signing marrying couples on a halakhic prenuptial agreement:⁹

A MESSAGE TO OUR RABBINIC COLLEAGUES AND STUDENTS

The past decades have seen a significance increase in the number of divorces in the Orthodox Jewish Community. In the majority of these situations, the couples act in accordance with Jewish law and provide for the proper delivery and receipt of a *Get*. Each year, however, there is an accumulation of additional instances in which this is not the case.

We are painfully aware of the problems faced by individuals in our communities tied to undesired marriages. Many of these problems could have been avoided had the couple signed a halakhically and legally valid prenuptial agreement at the time of their marriage. We therefore strongly urge all officiating rabbis to counsel and encourage marrying couples to sign such an agreement.

The increased utilization of prenuptial agreements is a critical step in purging our community of the stressful problem of the modern-day *Agunah* and enabling men and women to remarry without restriction. By encourag-

ing proper halakhic behavior in the sanctification *and the dissolution* of marriage, we will illustrate that all of the Torah's paths are peaceful.

(Signed by: Rabbi Norman Lamm, Rabbi Zevulun Charlap, Rabbi Herschel Schachter, Rabbi Moshe Dovid Tendler, Rabbi Mordechai Willig, Rabbi Yosef Blau, Rabbi Michael Rosensweig, Rabbi Yaakov Neuburger, Rabbi Yonason Sacks, Rabbi Meir Goldwicht, Rabbi Jeremy Weider — Roshei Yeshiva of the Isaac Elchanan Theological Seminary, an affiliate of Yeshiva University, December 1999; Tevet 5760)

In recognition of this intolerable situation, much ink has been spilled in the past few decades regarding the modern-day *agunah* problem. Scholarly articles, both rabbinic and academic, have appeared in print and on the internet.¹⁰ Despite the seeming proliferation of serious discussions as to the seriousness and pervasiveness of the problem—aside from the serious attempts at preventative measures made by some of the establishments of Modern Orthodoxy briefly described above, there exist no rabbinic solutions for the cases of *agunot* who are victims of *get*-refusal today. As far as preventative solutions go, although prenuptial agreements have proven to be successful in nipping recalcitrance in the bud, only specific sectors of Orthodox Jews routinely sign. The vast majority of Jewish women who will need to initiate divorce are unprotected from victimization within accepted parameters of Jewish law.

Halakha vs. Civil Law in the Diaspora

The decisors of Jewish law throughout the ages were the rabbis. They had, and still have, the authority within the Jewish community to adjudicate, to respond to specific halakhic questions, and to develop the halakha in response to change. From the rabbinic point of view, if one goes back far enough in Jewish history, the source of the rabbi's authority is found "on-high." Each successive rabbi is a link of this chain. However, the fact that the rabbi is an authoritative figure does not mean that he has the power to enforce his rulings. In the Diaspora the power that lies in the rabbi's hands is the power of religious persuasion, leadership of followers, or perhaps social pressure within a defined social group. From the point of view of a congregant or litigant in the Rabbinical Court, neither the rabbi himself nor his court has any legal standing. The weakening of communal cohesion and the increase of an

individual's mobility, geographically and socially, have contributed to the lack of enforceability of a Bet Din's rulings.

On the other hand, every citizen of a state is under the jurisdiction of the judicial system of that state. The state not only has authority to rule regarding the individual within its borders, it also has the power to enforce those rulings. In many areas, the approach of the halakha and that of civil law will be similar, so as not to cause any discord within the individual or the society that attempts to adhere to both systems of law simultaneously. In some areas the two systems can live in harmony. However, in regard to divorce proceedings, there exist two major inherent differences between the halakha and civil law.

The first difference lies in the necessity to bring forth proof of fault before the court. In democratic countries, as a rule, there is a no-fault option when suing unilaterally for divorce, amongst other grounds. The no-fault divorce proceedings essentially means that the spouse who wants a divorce is not required to prove, or even mention, the other's negative traits or acts. However, when suing for a divorce in a rabbinical court, and the spouse opposes a divorce, the suing party must convince the rabbinical judges that a divorce is necessary in this case by presenting fault in that spouse. Moreover, the faults that are considered acceptable as grounds for divorce must come from a limited list of legitimate grounds in accordance with the halakha. The fault of the spouse being sued must be proven to the rabbinical judges so that a ruling will be issued, in various degrees of severity, that the spouse must go ahead with the administration of a *get*.

The second inherent difference between the two systems lies in the power, or lack thereof, of the judge in his respective legal system to change the individuals' personal status. While a civil Family Court judge has the authority to rule that the parties in question must divorce, he or she also has the power to issue a decree that transforms both individuals' personal status from married to divorced, or "remarriageable." The judge may do so even against one of the spouses' wishes. However, although a rabbinical court judge has the authority to rule that the parties in question must divorce, he does not have the power to change the individual's personal status through the vehicle of divorce. That power lies solely in the hands of the two parties themselves. In order for a *get* to be valid, Torah law (*d'oraita*) dictates that the husband must place the *get* in the wife's hand out of his own free will,¹¹ according to rabbinic ordinance (*d'rabbanan*) the

wife must accept the *get* out of her own will.¹² A rabbinic judge cannot divorce a wife in the husband's stead. At most he can persuade or even coerce a husband to give his wife a *get*. However, the means at the disposal of today's rabbi to do so are limited.

The combination of both these circumstances in the Rabbinical Court—that of the necessity to prove fault before the court and the inherent inability of the Rabbinical Court to actually put their own ruling into effect—gives rise to an impossible situation for one who is suing for divorce. Proving fault leads to angering the husband, while lack of proof would lead to the refusal of the Rabbinical Court to arrange the divorce proceedings! The plaintiff is forced to act against his or her own interests. The husband against whom negative claims have been made feels either that lies were perpetrated against him before a most venerable panel of rabbis, or he feels shame at having his unacceptable behavior brought to light. In any case, the husband would most likely retaliate with the ultimate tool he holds—a tool more powerful than the Rabbinical Court itself—refusal to grant the *get* to the wife who dared bring up his faults before the court.

Given the limited power of the rabbis in the Diaspora to ensure the giving of a *get*, the situation of the “modern-day *agunah*” has arisen. The husband may resort to naming a price for his acquiescence or he may simply refuse to give his wife a *get*. The fact that a civil divorce may be in place does not help alleviate this situation.¹³ The complete imbalance of power—not only between the husband and the wife but also the husband's power over the Rabbinical Court—leads to the ethical problem of one individual limiting the freedom of another.

Ethical Concerns of the Sages

Throughout the generations, the sages were sensitive to the needs and rights of individuals. These were viewed through the prism of achieving and maintaining a strong Jewish society. Concerns of “public policy” weighed heavily when ruling—whether in a Responsum or in a *takana*. The *ketuba*, or marriage contract, is a prime example. The explanation found in the Babylonian Talmud for the establishment of the *ketuba*, which was instituted to protect Jewish women as a group, was given as: *Mai ta'ama takinu rabbanan lah ketuba? Shelo tehei kala b'einav l'hotsiah—*

For what reason did our sages ordain the *ketuba*? So that it will not be easy in his eyes to cast her out.¹⁴

A fascinating example of “public policy” can be gleaned from two thirteenth-century Responsa. The first was formulated by the sages of Provence,¹⁵ who refused to permit a man to divorce his wife contrary to her wishes, saying: “The relevant rules were determined for just such a case, that a man shall not divorce his wife without justification, so that he should not come with a complaint whether she is weak or unsteady ... for otherwise one will not allow a daughter of Avraham Avinu to remain with her husband, for when he finds a more beautiful woman he will divorce her. And if this is the case, of what use are the rulings of the sages, when they ruled that one may not divorce his wife unless she acquiesces?”¹⁶

The second Responsum was composed by Rabbeinu Asher,¹⁷ and it prevents a woman from getting a divorce when she sues for it, using almost precisely the same language: “If a woman is enabled to get a divorce from her husband, merely by saying: ‘I don’t want him,’ one will not allow a daughter of Avraham Avinu to remain with her husband, as she may well become infatuated with someone else and rebel against her husband.”¹⁸

The reason that both these mutually opposite suits are denied is the same. “One will not allow a Jewish woman (a daughter of Avraham Avinu) to remain with her husband,” that is, if one enables divorces to be easily attained, one will not have Jewish family units remaining intact. This is the approach that guides the dayanim to this day.

It is noteworthy that the *Herem d’Rabbeinu Gershom* was actually described by the Rosh in quite modern terms. In a Responsum of the Rosh, rule 42, the Rosh explains the enactment of Rabbeinu Gershom as having been intended “to equalize the woman’s power with that of the man. Just as a man divorces his wife only of his own free will, so a woman can only be divorced in accordance with her will.”¹⁹

In actuality the *Herem* leads us to a situation in Judaism that differs from postmodernism’s standards of changing personal status. The situation in Jewish tradition today is that just as one cannot be coerced into entering a marriage (meaning that *kiddushin* do not take affect unless both the man and the woman enter into the marriage willingly), one cannot be coerced into leaving a marriage. Both the man and the woman have to agree to dissolve the union and only they have the power to do so. Today,

Jewish divorce is enacted solely by agreement of both parties—as opposed to the sensibilities of civil rights and civil liberties.

Although there is evidence from the Responsa that the halakhic decisors did, at times, base their rulings on ethical and societal standards, none of the tenets listed directly above, or other concerns of “public policy” serve to alleviate or are even palliative to the problem today. In fact, selected “public policy” concerns serve to exacerbate the problem.²⁰ In a Rabbinical Court, these established standards may outweigh any interest to preserve the individual’s rights to a life unfettered by an unwanted personal status.

A Contemporary Rabbinic Problem

In this generation, Rabbi Moshe Boczko²¹ identified the unethical situation of *get*-refusal from a rabbi’s point of view:

Thus, from the point of view of general fairness, it is difficult to comprehend that Hazal created several halakhot that the husband is obligated to divorce his wife and the authority is not given to the Rabbinical Court to implement this rule (ruling). And anyone who does not want to listen to the words of the sages can ignore them (literally: whistle at them), and the woman is obligated to suffer [at the hands] of a bad man that does not obey the ruling...And specifically in a matter so important as is family life, the Rabbinical Court is powerless and every man shall do as he sees fit?! And how is it possible that the sages will rule regarding an individual that he is obligated to divorce and they will not compel him to fulfill that which was imposed upon him?

. . . Therefore, logic dictates that the Torah delivered the rules of *gittin* (divorce) and *kiddushin* (marriage) into the hands of the sages. In accordance with their rulings (literally—words of their mouths) they (the people) will marry and on their word they will divorce...Meaning, that the Rabbinical Court is given all the means necessary to execute the ruling so that family life in Israel will not be abandoned.²²

Treatment

The ethic of guarding stable family units is still central to Jewish society. However, the criterion of the stable Jewish family unit has undergone somewhat of a metamorphosis in the last generation or two. With the ris-

ing incidence of divorce, the challenge is divorcing in a manner that will maintain all of the family members' mental and emotional health so that new family relationships can be formed—both between the former spouses as co-parents of joint children and in the building of new independent families.

In order to rectify the *agunah* problem and eliminate unethical behavior on the part of a recalcitrant spouse in a manner commensurate with Jewish law, the very root of the problem must be treated. That being the imbalance of power on two levels: between the husband and the wife as well as the husband's power over the Rabbinical Court.

Further halakhic solutions must be developed and accepted by responsible men and women of the halakha—those who understand the intertwining of the complexities of our dual existence as citizens of the postmodern world from within our strong beliefs as God-fearing Jews.

NOTES

1. If a woman were to have intimate relations with a man other than the man still considered to be her husband, she would be committing adultery according to halakha. Any children born from such a union would be considered *mamzerim* and would be excluded from marrying within the general community of *Am Yisrael*.
2. Decreed in *Herem D'Rabbeinu Gershom* (Enactment of Rabbeinu Gershom). See *Shut HaRosh* 42.
3. Rabbeinu Gershom wisely included an “escape clause” from his own enactment: *Heter Meah Rabbanim*. In extreme cases, where it is agreed by 100 rabbis that it is warranted, a man may take on a second wife—thus diverting back to the original biblical law. (This would include situations where a wife lies comatose for years or suffers from a severe mental illness or committed adultery and was refusing to accept a *get*. No such arrangement exists for the opposite case (the taking on of a second husband), since it would be in transgression of biblical law.
4. The basis of this section was published previously in Rachel Levmore and Daniel Clarke, “The Prenuptial Agreement of Mutual Respect, *Get* and English Law,” *Jewish Law* (Dec. 2008); <http://www.jlaw.com/Articles/getAndEnglishLaw.pdf>.
5. There is a misconception that since the Israeli Rabbinical Courts have power to levy sanctions against recalcitrant husbands, and that there is no *agunah* problem in Israel. Quite the contrary: Cases drag on for years. There is a policy of pacification of the husband on the part of the judges in the Rabbinical Court, and dayanim are reluctant to use their powers for fear of causing a *get*

- meuseh*, a coerced *get*, which is invalid. Israeli *ra'avads* themselves have cried out portraying the problem as severe. See Rav Eliyahu Bakshi Doron, “*Kakh Nitan Liftor Et Be’ayat Mesuravot ha-Get*,” *Meimad* (Av–Elul 5755): 8–9 (introduction); Rav Shear-Yeshuv Cohen, “Coercion of a *Get* in Our Times,” *Techumin* 11, pp. 195–202.
6. For an historical overview of the development in the greater Diaspora of prenuptial agreements for the prevention of *get*-refusal, which address the problem, see Rachel Levmore, *Minee Einayikh MeDim’ah: Heskemei Kedam Nissuin LMiniyat Seiruv Get*, Mosdot Ariel and the Council of Young Israel Rabbis: Jerusalem 2009; Rachel Levmore, “*Get*-Refusal in the United States and One Method of Prevention: Prenuptial Agreements,” *Women in Judaism* [ed. Tova Cohen], Ramat Gan: Bar Ilan University, 2001.
 7. The agreement that is in most widespread use in the United States is that which is recommended by the Rabbinical Council of America and its affiliated Rabbinical Court—the Bet Din of America. The Binding Arbitration Agreement can be found on the Bet Din’s website at <http://www.bethdin.org/forms-publications.asp>.
 8. There have been various decisions made by rabbinic organizations to implement the signing of prenuptial agreements, such as several resolutions of the Rabbinical Council of America. See the latest resolution at <http://www.rabbis.org/news/article.cfm?id=100772>.
 9. Published in *The Jewish Press* on Feb. 25th, 2000, p. 28; “Chained Women Could Have Used Prenuptial Pacts,” *Forward*, Feb. 25th, 2000; It appears on the site of the Rabbinical Council of America at http://www.rabbis.org/Prenuptial_Agreement.cfm.
 10. Note the publication dates of a selection of examples appearing in English:
 - Bleich, J. David, “The Device of the ‘Sages of Spain’ as a Solution to the Problem of the Modern-Day *Agunah*,” *Tradition*, Vol. 22 No. 3 (Fall 1986), pp. 77–87.
 - Breitowitz, Irving, *Between Civil and Religious Law: The Plight of the Agunah in American Society*, Greenwood Press, 1993.
 - Broyde, Michael J., *Marriage, Divorce, and the Abandoned Wife in Jewish Law: A Conceptual Understanding of the Agunah Problems in America*, Ktav, New Jersey 2001.
 - Dick, Judah, “Is an Agreement to Deliver or Accept a *Get* in the Event of a Civil Divorce Halakhically Feasible?” *Tradition*, Vol. 21 No. 2, (Summer 1983), pp. 91–106.
 - Greenberg-Kobrin, Michelle, “Civil Enforceability of Religious Prenuptial Agreements,” *Columbia Journal of Law and Social Problems*, Vol. 32 No. 4 (Summer 1999), pp. 359–399.
 - Globe, Leah Ain, *The Dead End: Divorce Proceedings in Israel*, Jerusalem 1981.
 - Haut, Irwin H., “A Problem in Jewish Divorce Law: An Analysis and Some Suggestions,” *Tradition*, Vol. 16 No. 3, (Spring 1977), pp. 29–49.

- Lamm, Norman, "Forward," *The Prenuptial Agreement, Halakhic and Pastoral Considerations*, (ed. B. Herring & K. Auman), New Jersey, 1996.
- Lamm, Norman, "Recent Additions to the *Ketubah*—a Halakhic Critique," *Tradition*, Vol.2, No.1, 1959, pp. 93–118.
- Levmore, Rachel, "Conflict of Legislations?" *Shalom: The European Jewish Times*, Vol. 41 (Spring 2004), <http://www.shalom-magazine.com/>.
- Levmore, Rachel, "Rabbinic Responses in Favor of Prenuptial Agreements," *Tradition* 42:1 (Spring 2009), pp. 29–49.
- Levmore, Rachel, "Get-Refusal and the Agreement for Mutual Respect: Israel Today," *Hakirah* 9 (Winter 2010), pp. 173–190.
- Riskin, Shlomo, *Women and Jewish Divorce: The Rebellious Wife, the Agunah and the Right of Women to Initiate Divorce in Jewish Law*. A Halakhic Solution, New Jersey 5788/1989.
- Weiss, Avraham, "The Modern Day *Agunah*: In Retrospect and Prospect," *The Prenuptial Agreement, Halakhic and Pastoral Considerations*, (ed. B. Herring & K. Auman), New Jersey, 1996.
11. B.T. *Yebamot* 112b ; Rambam *Hilkhot Girushin* 1:2.
 12. *Herem d'Rabbeinu Gershon*: see *Shulhan Arukh, Even haEzer* 119:6, *Divrei HaRama*.
 13. In fact, with a civil divorce in place the situation may be much worse. The man is then free to remarry civilly, while able to arrange a Jewish marriage, since according to Torah law he may have more than one wife simultaneously. The woman, in that situation may be able to remarry civilly, but is prohibited halakhically from joining in any kind of union with another man. Any children born of such a union would be categorized as *mamzerim*.
 14. B.T. *Yebamot* 69a, and many others.
 15. The vast majority of Responsa of the rabbis of Provence are the collection of Responsa of the Sages of Provence in the period of the RaShbA in the thirteenth century and in the succeeding generation. The other Responsa are those of the *geonim*, the Rif, the Rabi (*Ba'al Eshkol*), the Ra'avad, and the RaShbA.
 16. *The Responsa of the Rabbis of Provence*, Part I, 63, section opening 'od *sha'al*, and its continuation: ". . . who ruled that one shall not divorce his wife unless she and her relatives and the seven elders of the town agree," etc.
 17. Rabbi Asher ben Yehiel, the Rosh, died in the year 1327 in Toledo, Spain. He had been appointed rabbi of the large city of Toledo. After the death of the RaShbA, the Rosh was considered the leading halakhic authority in Spain.
 18. *Responsa of the Rosh*, Rule 43, part 8, section beginning "Answer": "Moreover I say that the *geonim* who formulated this regulation . . . did so in accordance with that generation, when it seemed to them to meet current requirements for Jewish women. Now, the case seems to be the opposite, Jewish women in the present generation are conceited; if the wife can bring herself out from under her husband's jurisdiction, saying: *I do not want him*, you will not leave a daughter of Avraham Avinu remaining with her husband, for they will pre-

fer another man and rebel against their husbands; for this reason it is best to distance oneself from coercion.”

19. *Shut HaRosh* 42.
20. As an example see the *Shach*, *Gevurat Anashim* 49, where Rabbi Shabtai Cohen (Poland 1621–1662) explicitly ruled against the coercion of a *get* at any time, for fear of creating *mamzerim* by doing so. The Israeli Rabbinical Courts view this opinion as carrying great weight.
21. Rav Moshe Boczko, former Rosh Yeshivat Heichal Eliyahu, which was founded in Montreux, Switzerland. In 1985 Rav Moshe Boczko, rosh yeshiva at the time, made *aliya* together with the yeshiva and turned it into a Yeshivat Hesder.
22. Moshe Boczko, “*Bedin get meuseh—siccum limudim b’yeshivat heichal eliyahu beperek af al pi v’hameidir.*”

Safe Jewish Homes

MENACHEM CREDITOR

(Rabbi Menachem Creditor is the spiritual leader of Congregation Netivot Shalom in Berkeley, CA and founder of www.facebook.com/1/708ac;ShefaNetwork.org: The Conservative Movement—Dreaming from Within. He is currently working on his first book, to be entitled Living a Mythic Life: Jewish Reflections Toward a Hopeful World.)

A few years ago, I spoke about domestic violence on Yom Kippur. Afterward, two very sweet members of my synagogue came up to me and said, “Rabbi, you shouldn’t speak about such ugly things from the pulpit. That doesn’t happen here.”

I thought to myself, “*Two rows behind you and a little to the left, it does.*”

Domestic violence happens in Jewish homes. This article is the reopening of the conversation, because we need to confront this issue. I wish we didn’t have to. But this isn’t only an issue in the Catholic Church. It is much closer to home than we’d like to admit.

Abuse happens within Jewish families. Physical and verbal abuse happen in Jewish families.

We don’t like to talk about what is ugly and painful. We feel shame in revealing our less than perfect family lives. We don’t want the outside world to know. We don’t want each other to know. So we remain silent. But we are hurting. Some of us are suffering, right here, in our midst. Others inflict deep pain upon those they claim to love.

Victims of abuse can be women or men, young or old. It has been suggested that, on average, Jewish women stay in abusive relationships for five to seven years longer than non-Jewish women, primarily because they don’t want to believe that domestic violence happens to Jewish women.

There are aspects of traditional Judaism, present even in modern con-

gregations, that maintain the weak position of the victim in the face of abuse. Here are two:

1) Some rabbis have invoked the Jewish ideal of “*shalom bayyit*,” of maintaining peace in the home, as justification for sending a woman back to her abuser. Some rabbis continue to counsel this way, and have only served to disempower suffering Jews.

2) A *get*, or Jewish divorce decree, by Orthodox law, can only be issued by a man, who can torment his partner with the *get*'s legal power and its control over the wife's future. This makes the vulnerable woman an *agunah*, a chained woman, trapped by Judaism's rules.

These two aspects of traditional Jewish life are problems. They make victimization possible within Jewish families, and they must be changed. We must take the deeply Jewish step forward and, together, condemn abuse of any kind in our community.



Abuse can be physical, sexual, verbal or emotional. It can come in the form of the ongoing use of demeaning words like “you're stupid,” or ugly, or crazy. It can be total access to and control over bank accounts and finances. It can be threats to injure children or pets. It can be monitoring and limiting friendships, going out, talking on the phone.

Domestic violence is not about having a bad temper or being out of control. It is about power and control—one person exerting power and control over another. Domestic violence impacts on the entire family, injuring also the children who witness abuse by hearing it or seeing it.

I offer two anonymous testimonies from Jewish victims of abuse. One is physical, and might help those in verbally abusive relationships say, “Oh, that's not me.” But the second is a case of verbal abuse, perhaps even harder to escape.

1) “The Jewish Community sees my husband as a respected professional who is educated, talented, outgoing, friendly, loving, caring, and compassionate. They were not witness to what took place in the privacy of our home. No one saw him hit, kick, and choke me. No one heard him tell our child, ‘Mommy's dead.’ No one was present when he threatened to commit suicide in the presence of our child, wipe me off the face of the earth, and promised that I would not survive the night.”

2) “I have a boyfriend who is charming to everyone, a real *mentsch*, sharp thinker—and everyone around looks up to him. So you can understand how I feel alone in how I am feeling, since everyone thinks so highly of him. It’s difficult to talk to him about anything because everything I say is either “stupid” or “crazy.” Sometimes I have to lie because I’m afraid of how he’ll react to certain things. I don’t mean to ramble—today was just a bad day. He says it’s my fault that the relationship is going south. I know I have to distance myself from the relationship but, honestly, I don’t think I can.”

• • •

We bear witness to these anonymous testimonies, wondering whether or not people sitting near us are in similar situations. We wonder, perhaps, what to do with the inescapable knowledge that there is, most likely, someone reading this article who is hurting.

So how do we do that? We can turn to halakha, Jewish Law, for guidance. The following is a brief summary of a lengthy *teshuvah*, a Jewish ruling, by Rabbi Elliot Dorff, entitled “Family Violence (HM 424.1995)”:

- 1) Beating and other forms of physical abuse, such as sexual abuse, are absolutely forbidden by Jewish law.
- 2) Verbal abuse is absolutely forbidden by Jewish law.
- 3) An abuser has the responsibility to acknowledge his behavior and do *teshuvah* by getting help.
- 4) Parents may never cause a bruise to their children, no matter what decisions they make regarding corrective parenting.
- 5) Children may not beat their parents, even when parents were formerly abusive themselves.
- 6) The requirement that one preserve not only one’s own life (*pikkuah nefesh*) but others as well, demanded by the laws of the pursuer (*rodef*) and of not standing idly by when another is in danger (*lo ta’amod al dam re’ekha*), not only permit, but require others who discover spousal or parental abuse to help the victim report the abuse and take steps to prevent repetition of it. Jews who suspect that children are being abused must report such abuse to the civil authorities, no matter what the consequences. Saving a life takes precedence over the presumption that parental custody is best for the child. These policies are halakhically binding. They are not optional. We are commanded by our tradition to protect ourselves and to intervene when necessary for others. There are times when it is necessary to act to protect the vulnerable.



Opening up darkened spaces is a scary, saddening task, but it is a sacred one as well. We've been taught by our tradition that "anyone who saves one soul, it is said about her that she has saved a whole world" (TB *Sanhedrin* 37a).

And one person's safety is reason enough for us all to spend the energy talking about abuse.

Perpetrating violence on an intimate partner is an affliction with a spiritual dimension that threatens the welfare of the entire community. We act with commitment to the health of our community when we hold abusers accountable. We act in accordance with halakha's call to pursue justice when we declare that abusers cannot remain in our midst and must dwell outside the camp.



The fabric of our Jewish homes is tradition's instruction to create spaces of safety. The fabric of our homes is our Jewish ethics, which demand that we pursue justice. The fabric of our homes is our developing liturgies and holy days, which call upon us to heal and create wholeness in our world.


For the welfare of both the individual homes we are blessed to have, as well as the collective one we create together, I pray that we commit ourselves to doing so.

May our homes be safe and healthy.

Breaking the Silence

ELAINE WITMAN

(Elaine Witman is the Director of the Shofar Coalition, convened in 2005 as a wake-up call to the Jewish community of Baltimore, MD, to address child and adolescent victims of sexual and all forms of abuse, children exposed to the trauma of domestic violence, and adult survivors of trauma. It is involved in all aspects of care for trauma survivors of all ages within the Jewish community.)

 On the Sunday before Rosh Hashanah in 2009, an audience of 225 individuals attended a Jewish community-wide Healing Service in Baltimore, Maryland. The Healing Service was convened as a gathering for survivors of domestic, sexual, physical, verbal, and all forms of abuse; family members and friends of survivors; mental health and physical health professionals; clergy; educators; and all who wanted to learn how to “break the silence” that surrounds and permeates abuse and trauma in a community. The Healing Service was designed and sponsored by the Shofar Coalition, a program of CHANA and the ASSOCIATED Jewish Community Federation of Baltimore.

Representatives from Shofar, CHANA, the Baltimore Board of Rabbis, and the *Baltimore Jewish Times* joined with eight courageous survivors who agreed to share their experiences of trauma endured as children, adolescents, or adults. Together, they delivered a message—in words, in chants, in prayer. In doing so, they challenged the audience to cultivate a Healing Community, one that actively listens to the truths spoken by those among us who have been victimized; one that believes and accepts that these traumatic experiences affect not only the victims but all of us; and a community that responds with compassion and action rather than with silence and denial.

Why a Healing Service?

Allow me to quote from a statement publically issued several weeks before the event by Rabbi Amy Scheinerman, President of the Baltimore Board of Rabbis:

As Jews, we understand viscerally from our historical experience what it is to be victims of persecution. Time and again, we have demanded that the voices of victims be heard, that their pain be acknowledged, and that justice prevail. Yet in our own midst, many have suffered silently for far too long, as victims of abuse and trauma whose pain and suffering have gone unacknowledged, whose stories have not been believed, and whose perpetrators have been shielded from suffering the appropriate consequences their behavior warrants. Silence and inaction have re-victimized those traumatized by abuse by inflicting fear, shame, and guilt. As a community, we have participated in a conspiracy of silence: denial of the truth of abuse in our midst, the silencing of victims, and our own individual choice of silence when fear or disbelief take precedence over informed response. The silence must end.

The ethical issues and the moral imperatives raised in Rabbi Scheinerman's statement apply to communities of all faiths, not just Jewish, and in societies across the country and the world. There is no place for denial, silence, or inaction in any community—certainly not in any Jewish community. In a Healing Community, of any faith, all of its members share a responsibility to acknowledge the pain and to help ease the suffering of victims. Pursuing justice by holding those responsible for abuse accountable, and thus preventing other innocent individuals from being victimized, is also an integral obligation for a faith community. There is no place in a Healing Community for bystanders.

In any discussion of the ethical issues related to abuse, it is important to understand certain facts. The majority of perpetrators are not strangers to the victims. It is difficult to secure an accurate number of abuse victims in general due to the consequences of the shame, fear, and silence that typically paralyze victims and communities. If an individual feels guilt and shame over the abuse, as is often the case, he or she will not admit that the abuse occurred. If a community denies that abuse happens—and worse, blames the victim or anyone who speaks about abuse and accused abusers—then the resulting fear often gives rise to victims being forced into silence. Where there is fear and silence, suspected abuse of children or adults remains unre-

ported to the authorities, thus allowing perpetrators to continue to victimize others, sometimes for many years. Failure to report suspected abuse means a failure to bring the perpetrators of abuse to justice.

I know of a woman in her mid-30s who was molested when she was a teenager by a well-known and greatly revered congregational rabbi in Baltimore. Shortly after the abuse occurred, her mother and two other rabbis whom she turned to for guidance told her to keep quiet so as not to destroy this much-loved rabbi's reputation. Besides, she was told, no one would believe her anyway. All these years later, this woman continues receiving professional therapy to help her deal with intense guilt over the number of women who were molested by this same rabbi long after she was. She believed that her imposed silence had resulted in the suffering of other women. Similarly, hundreds of men who had been sexually abused when they were young boys by the same rabbi over a period of more than 20 years finally came forward to speak of their suffering only after several of this particular rabbi's victims broke their silence, thus giving voice to so many who were re-traumatized by remaining silent for so long.

Knowing that the actual number of incidences of abuse is higher than reported, it is shocking to note that studies indicate that one in four women *report* that they have been victimized by domestic violence as an adult. Likewise, one in four women and one in six men *report* that they have been sexually abused in their lifetime. In the United States, 4 million children are *reported* to have been abused every year. There is no indication that these numbers are any different among Jewish individuals, nor is there any known difference in numbers among the various denominations within Judaism. A groundbreaking study published in November, 2007 entitled "History of Past Sexual Abuse in Married Observant Jewish Women" states that "Twenty-six percent of respondents in a study about the sexual lives and attitudes of married Orthodox Jewish women— 55% identifying as Modern Orthodox and about 45% as right-wing Orthodox—indicated that they had at some point suffered sexual abuse." (*American Journal of Psychiatry* 164: 1700–06).

The Ethical Imperative in Judaism to Help Trauma Survivors

Rabbi Mark Dratch, Founder and President of JSafe: The Jewish Institute Supporting an Abuse-Free Environment, wrote in a 2007 article entitled

“Few Are Guilty, but All Are Responsible: The Obligations to Help Survivors of Abuse”:

The Torah expresses the obligation to help those under assault or subject to abuse through both positive and negative precepts: ‘Thou shalt not stand by the blood of thy neighbor’ (Lev. 19:16) and ‘And you shall restore him to himself’ (Deut. 22:2). The Talmud (*Sanhedrin* 73a) teaches that while the latter verse teaches that one must intervene personally, the former expands that responsibility; a person may not just stand around idly while someone is being hurt.

All too often, the obligation to help victims of trauma and abuse is trumped by a fear of speaking out and getting involved—and a denial that the abuse even occurred. The resulting silence takes the place of bringing relief to the suffering of the victims and securing the safety of the community by bringing the perpetrators to justice. Both abuse victims and observers of the abuse are scared that no one will believe them if they speak up. They are afraid that exposing the abuse and the abuser will destroy their families or the families of the perpetrators.

By exploring the ways that victims are harmed by silence and inaction, whether self-imposed or imposed by others, we can best understand the importance of the Torah-based obligation stated above. The silence often sentences a victim to years upon years of isolation and feeling alone. Many of the people who come to the Shofar Coalition for help do so after years of telling no one what happened to them. Some come forward for the first time when they are in their 40s, 50s, or even 60s. An individual who attended our Healing Service last September submitted a note that stated: “I have been suffering from mental, emotional, and physical abuse for so many years. Can someone help me? I don’t feel safe.”

The prevailing silence contributes to feelings of intense shame, guilt, and low self-worth on the part of victims of trauma. People may wonder why the victim would feel guilty or ashamed about something that was done *to* them, not *by* them. As one survivor of incest explained to me, until the abuser is named, the victim carries and owns the shame and guilt. Once others know about the abuser, the shame is shifted from the victim to the abuser where it belongs. Excerpts from the testimonies of three of the eight survivors who spoke at the Shofar Healing Service gives us a window into the feelings of shame, fear, and isolation born out of silence.

A 45-year-old woman: I was a college graduate. I was a nice, Jewish girl from Pikesville [Baltimore] who married her best friend's brother, also from Pikesville. So how in the world could I be lying in the hospital emergency room with a broken arm, caused by my own husband? This kind of thing wasn't supposed to happen to people like me. I was scared and embarrassed, humiliated, and so ashamed. I felt so alone, I just wanted to disappear. The physical pain didn't even hold a candle to the mental pain I was holding inside. It was easier to keep that secret.

A 32-year-old man: I was first molested at the mikva when I was 4 years old . . . I was afraid to tell my father, so he never knew about it. It was like I had a Scarlet Letter on my forehead that said "easy target, molest me!" As a child, I was also molested by a female neighbor, my bar-mitzvah teacher, and while I was in yeshiva. Most of the molestations took place in a religious environment. [I was brought up to believe] that you should always have respect for your elders, that the Rabbi/teacher/parent/adult is always right. This led me to believe that I was the problem—it was my fault; I was bad.

A 65-year-old man: I didn't think that I was affected at all by these encounters with the rabbi and his friend, however 52 years later I realize that shame, embarrassment, and fear kept me from revealing the revered rabbi's insidious behavior. In fact, I could not speak out loud the name of the rabbi who molested me until I was 60 years old.

So many trauma survivors have expressed to me that perhaps even more painful than the original abuse that they have endured is the feeling that they were betrayed by the reaction of trusted individuals (parents, friends, rabbis, teachers) who were sought out for comfort, compassion, validation, support, and guidance. The denial, silence, and inaction on the part of trusted individuals give rise to profound feelings of being "re-victimized." The emotional scars left by such re-victimization are often long-lasting and more difficult to heal. A woman who was molested by her uncle over the course of two years beginning when she was ten, and who came to Shofar for services when she was in her mid-40s says:

For many years, I only told my closest friends about what had happened to me. The first time I told someone in a position of authority in confidence was to my rabbi when I was in my late 20s and already a mother. I went to my rabbi, whom I very much respected as a man of terrific judgment and integrity, and asked for help. He did not ask about me or my mental health, he didn't pursue a line of questioning that might have led to accountability

for my uncle, he didn't even want me to upset my father by telling him the truth if there were some way that it could be avoided. I went back into the closet of my shame and closed the door.

Rabbi Dratch, in a 2006 article entitled “The Shame of It All: The Real *Shonda* in Revealing Abuse,” points out yet another way that victims and the entire Jewish community are harmed by silence, inaction, and feelings of betrayal by family and respected members of the community. He states:

Many [Jewish] victims of abuse are exploited first by their Jewish perpetrators and then are betrayed by the reaction of the family and community they thought would help them, nurture them, and find them justice. In many cases, these victims lose faith in themselves, in the community, and in God. Those who do not reject their Judaism find strength in their faith, despite all that has been done to them. But in many cases victims are disillusioned by the institutions and leaders they thought they could trust. Too many of them abandon mitzvah observance and their connections to the Jewish community are weakened. This is a real *hilul hashem*!

Perceived Barriers, Unique to Jewish Communities, to Revealing Abuse and Acting to Help Abuse Survivors

Concerns of Hilul Hashem

Rabbi Dratch addresses these concerns in “The Shame of It All” when he states: “this concern about protecting the reputation of God and the Jewish people by repressing public discussion of behaviors and actions that may be deemed a ‘*shonda*,’ scandalous and disreputable, may in fact itself be a *hilul hashem*. It is the abuser and not the abused that has committed *hilul hashem*, and it is those who cover up and silence victims, not those who seek justice and the protection of innocent victims that desecrate God’s Name.”

The Shonda Factor

Individuals are often afraid to discuss abuse or to expose an accused abuser because of the potential harm to the perpetrator’s reputation. They fear that they and their families will be shunned or ostracized by the community. Sadly, this is often the case. Victims, and their advocates who do speak out, have become the target of verbal, written, and physical attacks. They are viewed as having brought shame to the entire community. The *shonda*

factor is further intensified in some Jewish communities by the fear that speaking out about abuse may damage the possibilities of young people in a given family finding suitable marriage partners. All in all, these fears not only give rise to the silencing of victims but to the organized cover-up of dangerous situations and enabling of potentially harmful abusers.

Lashon haRa (Libel or Slander) and Mesirah (Informing Civil Authorities)

Some Jewish people attribute their silence and inaction in the face of abuse to their adherence to and understanding of Jewish laws prohibiting *lashon haRa* and *mesirah*. In his “Few Are Guilty” article, Rabbi Mark Dratch states that: “These principles, and others, are valid, essential principles of Jewish life and law and should be carefully observed by committed Jews. But all too often misplaced priorities and misconceived interpretations of Jewish law have trumped equally valid halakhic concerns for the safety and security of Jewish bodies and souls.”

In the same article, Rabbi Dratch eloquently expresses the ethical responsibilities of the Jewish people when those among us are suffering from the horrors of abuse. In expounding on a quotation by Abraham Joshua Heschel having to do with a Jewish response to evil (“Few are guilty, but all are responsible”), Rabbi Dratch states: “So, while a small minority of the Jewish community is actually guilty of perpetrating abuse and violence, the entire community is responsible to come to the aid of victims, to pursue justice, to demand accountability, and to protect the innocents of our community and the integrity of our faith.”

Many years ago, on a visit to the United States Holocaust Memorial Museum in Washington, D.C., I saw the following line: “Thou shall not be a perpetrator; thou shall not be a victim; and thou shall never be a bystander.” The Museum’s website attributes the quotation to Yehuda Bauer, professor of Holocaust studies at the Avraham Harman Institute of Contemporary Jewry at the Hebrew University of Jerusalem. I do not in any way mean to equate the evils and horrors of the Holocaust with the evils of child abuse and domestic violence. I do, however, mean to say that we as Jews cannot and must not stand idly by while some of our fellow Jews are suffering due to no fault of their own, but rather due to the fault of abusive people and silent bystanders. Historically we as Jewish people know all too well the consequences of silence in the face of human suffering. *And abuse thrives in silence.*

Elaine Witman

I challenge all Jewish communities to rebuild themselves as Healing Communities. Healing Communities say to those who are hurting among us that they need not suffer in silence alone any longer. We need to replace fear, denial, and silence with compassion and truth, and to replace inaction with action. We as Jewish communities will attend to the healing of all those who wish to recover from the long-term effects of abuse. We will commit to bringing the perpetrators of abuse to justice and to preventing them from hurting others. We can do this! We must do this!

For information about Healing Services and other Shofar or CHANA sponsored activities, contact Elaine Witman at ewitman@associated.org or 410.843.7582.

A Modern Orthodox Approach to Interfaith Dialogue

ABRAHAM UNGER

(Rabbi Dr. Abraham Unger is Assistant Professor and Director of Urban Programs in the Department of Government and Politics at Wagner College and serves as Campus Rabbi of the College Chaplaincy. He is founding Co-Chair of the Faith and Public Policy Roundtable.)

In 1964, Rabbi Dr. Joseph Soloveitchik (the Rav), the formative intellectual leader of postwar American Modern Orthodoxy, wrote that Jewish-Christian interfaith relations “must be out-directed and related to the secular orders with which men of faith come face to face. In the secular sphere, we may discuss positions to be taken, ideas to be evolved, and plans to be formulated. In these matters, religious communities may together recommend action to be developed and may seize the initiative to be implemented later by general society.”¹

In 1966, this mandate was practically formulated by the Rabbinical Council of America to mean that interfaith work ought to be about positively affecting “the public world of humanitarian and cultural endeavors . . . on such topics as War and Peace, Poverty, Freedom, . . . Moral Values, . . . Secularism, Technology . . . , Civil Rights.”²

The flip side of this position, which emphasizes social justice work as the sole authentic purpose of interfaith dialogue, was that interfaith discussion on the level of doctrinal dialogue was disallowed. Indeed, the Rav had made that point explicit. In good neo-Kantian fashion, he posited that authentic revelatory religion is ultimately a private affair and there is no point in debating it.

The Rav's existentialist bent further buttressed a philosophical argument against doctrinal dialogue. Since the human condition centers around an individual's loneliness and search for meaning through, in his model, the halakhic life and its faith, any attempt at communication about the content of this ultimately incommunicable commitment to members of other religions would not only be futile, but a diminution of the covenantal experience itself. The Rav's position, arguing for worldly civic engagement rather than abstracted theological negotiation, became the halakhic guidepost by which the centrist wing of traditional Jewry has historically measured its joint efforts with non-Jewish partners in faith.

The Rabbinical Council of America's 1966 statement crystallizing the Rav's philosophical language into praxis was a direct reaction to the Second Vatican Council's declaration of *Nostra Aetate* seeking more open, collegial discussion with Jews, "especially by way of biblical and theological enquiry and through friendly discussions."³ However earnest and positive *Nostra Aetate* turned out to be, at that early date of its initiation, and just two decades after the Holocaust perpetrated by Christian Europe, the Rav could not easily let go of concerns based on centuries of persecution of Jews, which, historically, often took the form of theological disputations.

Notwithstanding that historical backdrop, I am convinced that, based on his essential neo-Kantianism, the Rav really did believe in principle that it was purposeless to embark on discussions about the nature of the divine. Nothing serious could come of such discussions. Rather, shared human concerns, emanating from general religious convictions that speak to the practical needs of humans in the secular sphere, would be a more realizable effort in both substance and usefulness in the material world, with which, after all, the Rav's ideal human type, Halakhic man, is most concerned.

Interfaith scholar Rabbi Dr. Eugene Korn notes that the Rav never signed an outright ban on interfaith dialogue promulgated by the universally respected halakhic arbiter Rabbi Moshe Feinstein.⁴ This makes clear that the Rav's objection to interfaith dialogue was one of degree at the speculative level of joint covenantal rumination, but not one of kind altogether to the interfaith project in and of itself.

Of course, the Rav's stature as the pre-eminent halakhist of Modern Orthodoxy makes his judgment in any arena the primary stance one has

to take into account when embarking on a related effort. However, there is also a cogency to his argument on both intuitive and philosophic levels that I think was historically prescient.

On the intuitive level, if religion is ultimately about grasping for the ineffable through one's own tradition, is it really possible to communicate in mere human language, whether through argument about a particular piece of text or dogma, the universe of feeling behind that lived faith? Furthermore, I wouldn't put it past the Rav to have recognized in the early 1960s that globalization and a more pluralistic bundle of identities was upon us. We had firmly left the medieval world of absolutes—and even the Enlightenment world of universal reason.

Philosophically then, we are living in a period that presumes a confidence in the authenticity of one's own cultural context, obviating the need to negotiate one's particularistic convictions. Rabbi Dr. Walter Wurzbarger wrote that the Rav was a halakhic judge for postmoderns precisely because of his "objection to the employment of modern historic and textual scholarship to ascertain the meaning of halakha," which "reflects not naive traditionalism but highly sophisticated post-modern critical thought. He insists that halakha operate with its own unique canons of interpretation."⁵ In their own ways, text-based postmodern philosophers Derrida and Gadamer came to the same conclusion.

Our age is one of multiple global identities not necessarily in competition with one another, but rather ideally co-existing in their happily independent and authentic cultural lives based on their own self-understood communally transmitted truths. The Rav's thinking in 1964 on the relationship between diverse faith communities may be viewed as not just courageous for staking out a unique claim against the public tide of the time, but in fact turns out to be an apt description of current postmodern social mores.

This is the intellectual setting of a new interfaith effort called the Faith and Public Policy Roundtable. It was established to address the secular arena of public policy the Rav felt it appropriate for this type of forum to consider. In September of 2008, as the American economy was clearly on its way to a sudden and sharp contraction, a group of New York-area Jewish, Catholic, and Protestant religious leaders gathered as a think tank to explore whether they might develop language and programmatic ideas that could offer a way of religiously speaking to our deepest civic concerns

as Americans. The agenda formulated at our founding continues to drive us: to demonstrate that mainstream religious communal figures outside the fundamentalist orbit could generate a public theology and speak to social issues as strongly and definitively as the evangelical sector.

The invitation that went out to founding steering committee members explicitly invoked the Rav's mandate to focus on shared public concerns by informing participants that "This is not a group devoted to doctrinal negotiation, but rather a think tank concerned with offering a language that joins the concerns of faith to the concerns of the polity."⁶ This idea of not dealing with doctrine extended organically to any joint work on the roundtable between me as an Orthodox member and non-Orthodox rabbinic colleagues. Our task was not to reconcile differing faith perspectives, but rather to address the polis as a religious voice concerned with public policy.

At subsequent meetings, the Rav's position was openly discussed and seemed natural. Our sense as a group of American clergy and academics is that we are living in an era during which our religious communities do not feel palpably threatened, either from outside forces or by each other. The global sensibility I think the Rav intuited is an organic part of contemporary social life.

As meetings went on, it became clear that we all hoped our activity would not only add a spiritual dimension to the public space, but reinvigorate our respective faith communities' populations to deepen their own civic engagement as well. We bemoaned the overwhelming reality we shared anecdotally that our organizations' members often lead bifurcated lives as religious adherents without somehow extending that commitment to the whole of life beyond distinctly ritualistic settings such as prayer services. Each of us brought to the table a gnawing frustration that our communities didn't quite catch that their traditions are ultimately prophetic and seek out justice as a core value.

We recognized through 2008 into 2009 that public outrage was growing over the practices of some of our largest corporations alongside an ongoing debate about how government ought to react. It seemed clear that Americans were now reflecting upon what our democracy has come to. Perhaps this was in fact our group's time to make a case to our own communities as much as to the world at large that the religious life is an activist life demanding accountability at all levels of the human family.

It was immediately clear that the economic downturn had to be the first issue we tackled. After all, it was a distillation, all too real in its crushing impact, of values, now clearly askew, that Americans had been taking for granted in recent decades. British Chief Rabbi Dr. Jonathan Sacks suggests that a United States once claiming biblical ideals of shared republican purpose as its lodestar is increasingly speaking in terms of a crass individualism supporting only the protection of private interests. The volunteeristic skin of de Tocqueville's America has been shed.⁷ Political scientist Robert Putnam's famous 2001 study of the decline in American civic participation⁸ only proved Rabbi Sacks' sad premonition. We've learned all too clearly by now that a political and economic culture driven solely by an ethos of privatism is unsustainable. This is where the perspective of faith and its values may step in to provide some guidance.

The Faith and Public Policy Roundtable seeks to capture the immediacy of conviction and language exemplified by public theologians of a previous era such as Heschel and Niebuhr. Those kinds of prophetic voices are conspicuous by their absence from American public life today. As our Co-Chair Rev. Dr. Gary Mills claims, "We are convinced that it is high time for mainstream, non-fundamentalist religious leadership and scholars to re-emerge in the American conversation on issues like the economy, education, war and peace, and healthcare, to name just a few."⁹

At the end of 2009, the Roundtable released its debut position paper, a Statement on the Economy. This paper illuminates the religious dimension of economic justice. It seeks to begin generating a non-fundamentalist public theology by positing essential religious values as a lens through which to evaluate policy.

To follow up on the release of the economy statement, the Roundtable organized a Call to Action Weekend for November 20–22, 2009, the weekend before Thanksgiving, which featured charitable advocacy and thematically coordinated sermons on social justice at 73 New York-area houses of worship.

The Statement on the Economy has been signed to date by 34 religious leaders, ranging from the Catholic Archbishop of New York to major leaders representing Orthodoxy and the Conservative and Reform movements. Additionally, five major area academic and religious institutions such as Fordham University and Wagner College are hosting our statement on their websites.

Father Patrick Ryan, S.J., a founding steering committee member, put it succinctly when he stated, “This economy has opened up a window for discussion of the common values” that “bind us together as Americans and as members of the human family. Our task is to articulate those values and provide thinking on their civic and spiritual dimensions.”¹⁰ Our next task is to take on the immigration issue. To that end, we are drafting a new position paper and will host a conference in Spring featuring panelists who speak to the issue of immigration from the perspective of faith.

This has been a broad introduction to the context and mission of our Roundtable. But, as an Orthodox Rabbi, there is yet one more dimension to this work that is perhaps its most important attribute. It is to live out the wise teaching of the Rav, so sensible as *sevarah*, clearly reasoned logic, and yet at the same time so in tune with the classic *mesorah*, the fundamental tendency of the tradition. The Rav’s argument is one that simultaneously speaks to justice and the observant Jew’s mandated involvement with his or her world.

While the Rav correctly surmised that Torah could not be translated into neutral language, he believed that, both as descendants of Adam and Abraham, our lives as Jews are bound up with the state of our all-too-human universe. The halakhic life demands a rigorous engagement with every facet of the human condition. Retreating from vigorous involvement with society at large is a retreat from humanity itself, and that is not, ultimately, the Jewish way.

NOTES

1. Joseph B. Soloveitchik, “Confrontation,” *Tradition: A Journal of Orthodox Thought*, Vol. 6, No. 2, 1964.
2. Boston College, Center for Jewish-Christian Learning, <http://www.bc.edu/research/cjl/meta-elements/texts/center/conferences/so>.
3. Nostra Aetate, DECLARATION ON THE RELATIONSHIP OF THE CHURCH TO NON-CHRISTIAN RELIGIONS, Second Vatican Council, October 28, 1965.
4. Eugene Korn, “The Man of Faith and Religious Dialogue: Revisiting ‘Confrontation’ After Forty Years” <http://www.bc.edu/research/cjl/meta-elements/texts/center/conferences/so>. . . [2] Boston College, Center for Jewish-Christian Learning, Conference, Rabbi Joseph Soloveitchik on Interreligious Dialogue: Forty Years Later, November, 2003.

Conversations

5. Walter S. Wurzburger, "Rav Joseph B. Soloveitchik as Posek of Post-modern Orthodoxy," *Tradition*, Vol. 29, No. 1, 1994.
6. Letter of Invitation, Faith and Public Policy Roundtable, September 2, 2008.
7. Jonathan Sacks, *The Persistence of Faith*, London: Continuum, 1991.
8. Robert Putnam, *Bowling Alone: The Collapse and Revival of American Community*, New York: Simon and Schuster, 2001.
9. Faith and Public Policy Roundtable, Press Release, Fordham University, Bronx, New York, and Wagner College, Staten Island, New York, November 3, 2009.
10. *Ibid.*

Environmental Issues in Israel

SARAH NADAV

(Sarah Nadav holds a Master's degree in Nonprofit Management from Hebrew University. She has been active in numerous Israeli environmental organizations and was instrumental in organizing plastic bottle recycling in Jerusalem. In recognition of her efforts founding and running a grassroots organization called Atid Yarok (Green Future), she was given an award from the Israeli Ministry of the Environment for outstanding volunteer achievement.)

Located on a landbridge between Africa and the Middle East, Israel is a small country with a unique environmental landscape and a wide range of climates and ecosystems. Within the span of just a few hours, it is possible to drive from the lowest point on earth, where you can swim in the Dead Sea, to the top of Mt. Hermon, where you can go skiing.

Before the creation of the State of Israel, the land was mostly empty and barren. The population density was low. In the last 60 years, Israel has transformed into one of the most densely populated countries on earth.

Israel has been side-tracked by rapid development, consecutive wars, and civil unrest, which have led to wanton use of scarce resources and full-scale environmental destruction. With so many people fighting over ownership of the land, very few of the players have actually made the protection of the land itself a priority. Although many people are concerned about the existential threat to Israel, many overlook the very real threat to the health of Israeli citizens by environmental hazards. Recent research has shown that the number of deaths per year from environmental-related illnesses—including respiratory diseases, cardiovascular diseases, and cancer—is in the thousands.

It is easy to get depressed when working in the environmental field here in Israel. There are so many problems, and environmental issues are generally not taken seriously. The ramifications of ignoring environmental issues are dire—they include health problems, energy shortages, and water shortages. Israel is on the brink of numerous disasters. That said, I am not worried about Israel at all. For better or worse, Israelis thrive on emergencies. Long-term planning is basically non-existent. Israelis fly by the seat of their pants—and one way or another, they generally end up on top. That is why, faced with the unmitigated environmental mess that Israel has right now, I have hope. The challenge will not be whether or not Israel can handle the challenge; it will be proving to the government and the average Israeli that the threat is real, imminent, and requires immediate action.

Israel is a small country with few natural resources but enormous scientific, engineering, and academic resources. The miracle of this country is that the threats that I am writing about today can be a thing of the past in just a few years. Israel already has within its borders enough ingenuity to transform its environment from one on the brink of disaster to a light unto the nations (based on renewable energy, of course).

Although creating solutions to environmental problems is initially costly and challenging, the reward is also very high. Not only will such solutions create a healthier population and ecosystem; but due to the demand for new technologies to solve the global environmental crisis, they will lead to enduring economic prosperity.

Israel is already a world leader in the new field of clean technology. But like Israel's best fruits, the best technology is being exported to other countries. This is not the fault of the companies themselves, many of which would like to see their technologies adopted regardless of any profit. Unfortunately they cannot overcome the bureaucratic barriers in place by government agencies that do not recognize the importance or potential of adopting clean technology into their infrastructure.

Industry and economic prosperity are no longer at odds with environmental protection. The systematic solution to Israel's problems is the creation of a thriving industry in clean technology.

In this article, I will outline Israel's basic environmental challenges and potential solutions. I will also introduce readers to new concepts of Israeli ingenuity that can lead to dramatic differences in the Israeli ecosystem over the next few years. Because Israel is an ecosystem, all things are connected;

so too, in this article each section is connected to the other. I have broken the article into topics of water, air quality, transportation, and energy. Each of these subjects overlaps with the others. It is impossible to separate pollution from poor public transportation and air quality in general; but for the purpose of coherency, I will try to tackle each topic one at a time.

There are two very different schools of thought that are currently emerging into today's Israeli environmental movement: the "old school" of traditional conservationists versus the new clean technology field. While they should not be at odds, they have yet to join together. Traditional conservationists focus mainly on protecting resources, preventing development, and acting as a regulatory force for industrial development. Clean technology is a term that has developed over the last five years to describe new technologies that produce solutions for environmental problems—specifically in the areas of energy, transportation, and water.

Water

Water is Israel's most pressing environmental challenge—and is indeed the area where Israel has made the most progress. The barren landscape provides very few natural water resources, and the explosions of industry and population have led to a major drain on the sparse water resources that already exist. It would not be an exaggeration to say that Israel's water situation is dire and that the future of the country (and some say the future of peace in the Middle East) is dependent on the management of this precious resource.

The mighty Jordan river has been reduced to a trickle, and many of Israel's other rivers have either dried up or become contaminated by industrial discharge, sewage, and agricultural pollutants such as pesticides and fertilizer. Due to five years of low rainfall, Israel is in the midst of a draught. The Kinneret, Israel's only freshwater lake, consistently sinks below the minimum level that it needs to maintain its integrity without turning into a swamp; and even the Dead Sea is reaching record lows and is at risk of drying up completely. Most drinking water comes from coastal and mountain aquifers, which are quickly being drained or polluted. Demand and consumption have been increasing steadily, and supplies are dwindling.

Israelis have worked to improve the water economy in numerous ways—desalination, water-saving technologies, extensive use of recycled

water, purification systems for aquifers and fresh water systems, and the institution and enforcement of stricter regulation. The government has set up a new tax that gives all residents an allotment of water per month for a reasonable price. Those who go over this amount pay a hefty fee, which rises proportionally to the amount of water used, with people who use the most paying more per cubic meter. This policy has just been put into place, and it remains to be seen what the effect will be. Officials are optimistic.

Although Israel has been developing these technologies for domestic use, the technologies are proving to be groundbreaking in both innovation and application. Oceans cover 70 percent of the world's surface and constitute 97 percent of the world's water. Of the 3 percent of the world's fresh water, an estimated 70 percent is contained in the polar ice caps and is not available for human consumption—leaving only approximately 1 percent of the world's water available for human use. Until recently, fresh water has been considered to be a finite resource; but Israel is proving that this is not the case. Israel has developed and implemented the process of desalinization, which extracts fresh water from ocean water. This is a major innovation. By the end of 2009, desalinization will produce about 40 percent of the country's domestic consumption; this is expected to rise to 80 percent by 2014.

International agencies are now seeking Israeli solutions for help to solve the global freshwater shortage. It is estimated that there are more than 1 billion people worldwide who do not have access to clean water on a regular basis. The World Health Organization claims that poor drinking water and inadequate sanitation claim the lives of approximately 5 million people per year due to water-related health issues, including dysentery, schistosomiasis, trachoma, or infestation with ascaris, guinea worm, or hookworm.

Water security is one of Israel's chief concerns and the environmental issue that Israel is most successfully tackling. Israel's commitment to ensuring clean water availability for the future will not only help the population of the country but also, it seems, will help people around the world.

Air Quality

Air quality represents one of Israel's the most immediate health concerns and is often called an "invisible killer." It is one of the most serious

problems—but also one of the easiest environmental problems to solve. Air flows from one region to the next, and there is no need to actually clean the air; simply stopping to pollute it will fix the problem. Air pollution is easy to pinpoint and must be dealt with at its source. Emission standards, which are set and enforced by the government, are the most important aspect of any clean-air initiative. At this point, Israel's official standards are good, but they are poorly enforced; in many cities, pollutant levels are approximately 65 percent above the levels set by the World Health Organization.

Israel's air quality is measured by a national network that has over 2,000 stations throughout the country. There are various problems, depending on the region. Most air pollution is created by transportation, energy production, and industry, and these have all increased dramatically over the last few years. The number of vehicles in Israel has almost doubled within the last ten years, as has electricity consumption. The major air pollutants are particle matter, nitrous oxides, ozone, hydrocarbons, carbon monoxide, sulfur dioxide, carbon dioxide, and lead.

Air pollution in Israel is aggravated by its very own landscape. The small land area, arid climate, lack of rain, and coastal industries near densely populated communities create increasingly poor air quality. Haifa Bay is one of the hardest-hit areas, as it combines intense industrial activity with difficult atmospheric dispersion conditions caused by the Mediterranean Sea and the topography of Mount Carmel. This leads to high levels of pollutants that are not easily dispersed. Despite efforts over the years to reduce air pollution levels, they have been mostly unsuccessful. A new approach is being implemented that will now focus more on emission standards as opposed to ambient toxin levels in hopes of regulating the creation of the problem.

There are a number of simple and effective solutions that Israel can put in place to preserve air quality. One of the most important is to regulate industry. Tight controls on emissions from factories will reduce the amount of toxic chemicals released into the atmosphere.

Another problem, which has social implications, is the uncontrolled burning of garbage. Pound for pound, an uncontrolled fire can produce thousands of times more toxins into the atmosphere than a high-temperature incinerator. Garbage burning is particularly commonplace in Arab areas. This leads to extremely bad air quality in the villages and con-

tributes to air pollution in general leading to significant health problems for the entire population.

Transportation is another major cause of air pollution. It is effective to set higher standards on car emissions, but that is not the ideal. The ideal is to get combustion engine vehicles off the road by switching to public transportation that is environmentally sustainable, such as light rails and trains. For those who want to continue to own their own car but lower their carbon footprint, Israel is introducing a network for electric cars that will be online in the next few years. This will be discussed in greater detail in the transportation section of this article.

Finally, energy production, which will also be discussed in more detail, is a major air pollutant. Coal-burning plants and fossil fuels are the main sources of air pollution spreading poisonous gases into the air. As with transportation, regulation of emissions on the current use of energy production is helpful; but the ideal is to switch energy production to new, cleaner resources such as solar, wind, and water power.

Transportation

Israel has become an increasingly mobile society. It is not uncommon for Israelis to make long commutes, travelling from one city to the next—and at times, from one side of the country to the other—for work. In the early years of the State, public transportation was a priority, and many people relied on Egged, the national bus company, to get from place to place; but this is no longer the case. Public transportation lacks funding, and many bureaucrats have been following the poor example set by the United States of building more roads as opposed to light rails and trains, which are common in Europe.

The majority of Israelis still travel by public transportation, primarily on buses. Egged is still the largest bus company, but it is not as ubiquitous as it once was. Despite the rise in people's mobility and their need for transportation, there has not been a significant rise in the number of buses since the 1980s. Private cars in Israel used to be seen as a luxury item, but due to rapid economic growth and poor government planning, many Israelis now need private cars because they lack alternative means of transportation. High gas prices and associated costs make owning a car extremely expensive; and it is not unheard of for people to spend up to one third of

their monthly salary on a car and its associated costs. In 1960 there were 70,000 vehicles in Israel, and the vehicle density was ten cars for every kilometer of road. Today there are an estimated 2.1 million cars on the road, and the vehicle density has risen to an average of 120 cars per kilometer.

A prime example of this is the Modi'in area (between Jerusalem and Tel Aviv), which is touted as being one of the best planned cities in the country. Modi'in has been developed primarily over the past ten years, and the city is still under construction. The only public transportation is an inadequate bus system that does not connect to any of the outlying areas. In the center of Modi'in, there is a train station that connects to almost every major city in the country. Unfortunately, most bus lines do not stop at the train station, and surrounding villages have almost no access by public transportation at all. Extensive research has shown that for intercity public transportation to work there must be intracity public transportation as well. If people cannot easily travel from the train to their final destination, they will not take the train. This unfortunately leaves Modi'in with a beautiful new station and relatively few passengers.

Although public transportation is generally considered the ideal for environmental preservation, there are cleaner options for private transportation than the existing combustion engine car. Israel is about to become the first country in the world to have in place a national network of electric cars and charging stations. In a study done in 2009 (by Project Better Place), 57 percent of Israelis reported that they would make their next car purchase an electric vehicle if given the option.

Project Better Place is a private company based in Israel, with branches in the United States, Australia, Denmark, Canada, and Japan. They are the world's leading electric vehicle (EV) services provider, and they have already begun work on a series of charging stations throughout Israel. They have signed contracts with all of Israel's major malls, with train stations, and with Jerusalem's Mayor Nir Barkat, who will place charging stations throughout the city of Jerusalem for a pilot project starting this year.

Israel is currently the world leader in electric vehicle adoption, and it will be interesting to see how this develops in the near future. Electric cars are cleaner and better for the environment than gas guzzling combustion engines, but it begs the question: Where is Israel going to get the electricity to meet the country's transportation needs?

Energy

As Israel develops technologically and the standard of living rises, its energy needs are also rising. From cars to air conditioners, Israelis are becoming used to amenities that were almost unheard of just a few years ago. This has led to electric blackouts in the summers when energy needs are highest, and is setting up a future energy crisis where Israel will not be able to meet the needs. Energy experts agree that Israel lacks the proper infrastructure to meet the growing demands. Immediate measures need to be taken to ensure the energy supply.

Israel is, unfortunately, dependent on fossil fuels for the production of electricity; but since it has no natural resources of fossil fuels, it has to depend mainly on long-term contracts with countries including Mexico, Norway, the United Kingdom, and Australia for oil. Israel is one of the only countries that has a power grid that is not connected to that of any other nation—making Israel into a virtual electric island. For security reasons, it is vital that Israel secure its power production. Due to the animosity of surrounding countries, Israel has no access to the copious amounts of oil from neighboring oil-rich nations. Because of that, Israel relies on coal, imported mainly from South Africa, for its electric power generating plants.

Coal is an extremely dirty source of fuel, creating hundreds of thousands of tons of ash per year. Burning coal releases mercury, selenium, boron, and dioxins, which are extremely dangerous, and the process also contributes to global warming by emitting carbon dioxide and methane (greenhouse gases). Burning coal also creates acid rain, which has harmful effects on plants, aquatic animals, and infrastructure. Environmental Minister Gilad Erdan has recently campaigned against the proposed coal power plant, which would increase existing emissions by more than 10 percent.

Last year, natural gas was found off the coast of Haifa, and plans are being made to use this resource for energy production. Although this could keep Israel running with its existing infrastructure, it will someday run out and leave the country in the same situation that it is in today.

New polices and alternative energy can help boost the level of energy available. A more intelligent use of existing resources can also help to avert the pending environmental crisis. This can be done by encouraging the use of energy-efficient appliances, doing things as simple as turning off lights in rooms that are not in use, and being selective about the use of air condi-

tioners in the heat of summer. Simple actions such as planting trees can cut a house's energy usage by 15 percent due to the shade. Saving energy can be more effective than finding new (even "green") ways to produce it.

Most important, Israel needs to change its source of energy to renewable sources such as solar, wind, wave, and bio fuels. Israeli companies are leading the way in technological innovation, but this innovation is being applied mainly in other countries. Prime Minister Netanyahu has claimed that the country is on a path toward energy independence, and Environmental Minister Gilad Erdan has expressed a commitment to following through on that claim.

Although it is a step in the right direction that the government has begun to see energy independence as a vital goal, it will be interesting to see how this will play out on the ground. As of now, there has been little progress to move this agenda forward.

Conclusion

Despite Israel's leap into the "first world" in regard to standards of living, Israel is still very much a third-world nation. Rampant pollution, poor resource management, and a government that has not taken environmental issues seriously have led Israel to the brink of major ecological crisis. Israeli citizens are paying the price for this with both their health and their financial resources. Israel can no longer afford to see the environment as an issue for the future; it must realize that now is the time to act.

The combination of lack of natural resources and political isolation has created the necessity for Israel to take its place as a world leader in clean technology and to lead by example. It is not enough for Israeli scientists and engineers to create companies for the Nasdaq. They must see their work in action, protecting both the environment in Israel and Israel's political interests.

The future of protecting the Israeli environment is a partnership between government, industry, clean-technology companies, and environmental protection agencies. Natural resources are finite, but renewable resources are not. The wind and the sun, plants and waves will continue to create energy long after the last oil mine has been tapped. If Israel chooses, it can lead the way not just in technology but also by example, creating a cleaner and better environment for its citizens and for the world.

Creatures in the Nation-State: The Torah Ethics of Animal Rights

SHMULY YANKLOWITZ

(Rabbi Shmuly Yanklowitz was ordained from Yeshivat Chovevei Torah in June 2010. He completed his Masters at Harvard in moral psychology and a Masters at Yeshiva University in Jewish philosophy. He is a fifth-year doctoral student at Columbia University in Epistemology and Moral Development, a Wexner Graduate Alum, and the Founder and President of Uri L'Tzedek [the Orthodox Social Justice Organization]. He has also been an instructor of moral philosophy at Barnard College.)

Introduction

In what way are humans and animals distinct? Throughout history, arguments have been made on various grounds including: reason, emotional capacity, language, moral intuition, freedom of will, physical capabilities, and the ability to create sustainable social systems. If humans are created in the image of God,¹ then there must be something unique about our essence.² However, with time, each of the above proposals for human uniqueness has been exposed to have flaws. For example, a human without the ability to speak or hear certainly is not lacking in his or her definitional or moral status as human, nor is one who is missing a limb or has a lower-than-average I.Q. Additionally, more and more research has shown that many other species have a sophisticated capacity for communication, reasoning, deliberation, emotional life, the moral enterprise, and perhaps even self-consciousness within limits. It is now a well-known fact that humans share 98 percent of our genetic makeup with chimpanzees.

Most convincing perhaps is the suggestion that humans have unique responsibilities. Viktor Frankl, the great Holocaust survivor and psychoanalyst, suggested that “Being human means being conscious and being responsible.” This can be read normatively rather than descriptively, that we are not inherently different but have a higher moral calling to responsibility.

What makes humans most similar to God? What makes us most distinct from animals? The answer to these questions will help us to understand our fundamental relationship to all three (the divine, our fellow humans, and the animal world).

Human Responsibility to Creation

In the Creation story, humans are commanded to rule over all creatures.³ This can and should be seen as both a mandate to elevate human existence as well as to care for other creatures dependent on human mercy. We are empowered to emulate God, who is “good to all, and whose mercy is upon all works” (Psalms 145:9). The Rambam explains that the human subjugation of the animal world is descriptive, rather than prescriptive. That is to say, we allow ourselves to subjugate creatures—but we are not obligated to do so.⁴ The Rambam explains further that animals have their own teleological purpose—that they are created for their own sake.

Rav Soloveitchik taught that we are imbued with a capacity and imperative for “majesty and humility.” The Rav charges us to see our human limitations in a world that God creates and controls, while also fully embracing our unique human capacities and responsibilities that we, as humans, have been created to exercise and fulfill.

The great fourteenth-century Jewish French philosopher Ibn Caspi explains (on Deuteronomy 22:6) that animals are “*ke-Ilu avoteinu*,” that they are like our forefathers since they preceded us in creation and are similar to us in substance. This is a pre-Darwinian notion of evolution, which claims that humans have not only a moral but also a sacred responsibility to show compassion to God’s sentient creatures. By the nature of their sentient capacity (although animals have duties as well according to the Torah; see Genesis 1:22), humans clearly have unique obligations and responsibilities that animals do not. We can now pose the question: Are the rights of animals comparable to the rights of humans?

Philosophical Construct of “Rights”

Rights are normative principles often understood as entitlements or freedoms. By being human, one might suggest that one has the right to pursue self-interest and happiness. The origin, and even validity, of these rights has been a matter of great debate. Rights are granted to humans based upon a social contract, or, according to some, upon an inherent dignity bestowed by God. Can these philosophical foundations allow for the extension of these same rights to non-humans?

In many ancient societies, animals were perceived through a purely anthropocentric lens as mere tools to human fulfillment, a means to our ends. According to this mindset, non-human beings do not have their own *telos*, but are merely instrumental. Even by the time of the Enlightenment, some still argued for the strongest bifurcation between humans and animals. In the seventeenth century, during the Enlightenment, Descartes argued that animals lack souls, minds, and reason, based on his suppositions of animal consciousness and epistemic capacity.⁵

The first piece of legislation prohibiting animal cruelty did not emerge in an English-speaking society until 1635 in Ireland. Introduced by Richard Ryder, it forbade the ripping of wool off of sheep and tails off of horses.⁶ In 1641, the first legal code was passed in North America to protect domesticated animals from cruel treatment. Many cultures at this time still engaged in forms of animal torture for entertainment such as cock fighting and throwing, bull baiting and running, and dog fighting.

Centuries later, sports consisting of animal cruelty have unfortunately not gone extinct. In fact, with the advent of new production technologies, the disregard for the welfare of the animal kingdom, many have argued, is greater than ever before. At the same time, the animal rights movement has emerged in the past few decades to view animals as sentient beings that not only deserve human compassion but that have a right to exist and thrive. Martha Nussbaum has called this the “neo-Aristotelian capabilities approach.”⁷ She suggests that all beings that have a capacity (to exist, to learn, to be free, etc.) have the right to fulfill that capacity as long as its fulfillment does not harm another.

There are two primary approaches to the issue of animal rights—the utilitarian approach and the rights approach. Peter Singer, a bioethicist at Princeton, a utilitarian philosopher, and the author of *Animal Liberation*,

has argued for decades that vegetarianism is a moral imperative due to our knowledge of animal suffering. Singer has called modern meat production to be cruel and damaging to the ecosystem. A human desire for light pleasure does not allow for gross afflictions and death of animals. The pleasure does not match the pain.

Tom Regan and Gary Francione represent the rights-based approach. Regan suggests that animals are “subjects-of-life” and thus have a right to life and the same moral rights as humans. Francione argues for the rights of animals to be free from ownership. The Torah takes a different approach from both of these two philosophical schools of thought.

Jewish Animal Rights and Concomitant Human Virtues

The Torah articulates a myriad of animal rights and ties them together with mitzvot (opportunities for the cultivation of Jewish virtues). The Torah grants the right of rest on the Sabbath not only to humans, but to animals as well (see Exodus 20:10). To put the Torah’s incredible command of rest for animals into perspective, until the end of the nineteenth century, employees in the United States were still expected to work seven-day work weeks. Additionally, the Torah teaches that, during the week, an owner must be conscious of how his or her animals are being employed. One may not plow with an ox and mule harnessed together since both animals, being of unequal size and strength, will suffer (Deuteronomy 22:10). Perhaps most famously, the case of *shiluakh haKan* (the mitzvah to send away the mother bird before taking the chick) creates the imperative to concern oneself with the emotional state of animals as well as their physical state.⁸ Also out of concern for an animal’s emotional well-being, one may not slaughter an animal along with its young (see Leviticus 22:28).

The Rambam argues that there is no difference between the pain that humans feel and that which animals feel in this regard; between the love that a human mother feels for her child and the love that an animal mother feels for her young.⁹ When one encounters two animals and one is crouching under its burden and the other is unburdened because the owner needs someone to help him load it, he is obligated to first unload the burdened animal because of the commandment to prevent suffering to animals. The Gemara in *Baba Metsia* teaches us that avoiding the suffering of animals is a biblical law that pushes off rabbinic law.¹⁰ The Rambam

teaches us here of the importance of animal welfare via a radical suggestion that the suffering of the animal takes precedence, at times, over the burden of a fellow human being!

In one *teshuva*, Rav Moshe Feinstein rules that for “those who produce veal, there is definitely the prohibition of *tsa’ar ba’alei hayyim*.” In the same *teshuva*, he argues that “It is forbidden to cause pain to an animal to feed it food from which it derives no benefit, and that causes it pain in the process of eating, and that also brings about diseases, and they suffer from the diseases. Because it was for the sake of this benefit, that they can deceive people and it is forbidden from the perspective of *tsa’ar ba’alei hayyim*, on a biblical level, because for the sake of such purposes it is not permitted for people to cause suffering to animals.”¹¹

After all, we learn from the *Shulhan Arukh* that “if an animal has been fattened with forbidden foods, it is permitted. However, if it has been fattened exclusively for its entire life with forbidden foods, it is forbidden.”¹²

The Talmud (*Berakhot* 40a) teaches us that one must indeed make personal sacrifices for the welfare of animals. One of the best known instances of animal protection is that one may not eat until having fed one’s animals. This is not only Jewish law but it is also interpreted as the epitome of Jewish virtue. In fact, the Midrash states that Moshe was chosen as the leader and prophet for the Israelite people because of his consideration for animals. It is not only the prophets who are so often portrayed as compassionate shepherds; this is also a popular way of personifying God: “The Lord is my shepherd, I shall not want” (Psalms 23:1). One may not treat one’s animal merely as property to be sold as one wishes. Rather, we are told that one may not sell one’s animal to a non-virtuous person out of fear for how they will treat that animal.¹³ The Gemara (*Baba Metsia* 85a) explains that the great Rabbi Yehuda HaNassi, the redactor of the Mishnah, experienced years of suffering because of one act of cruelty shown to an animal when he ruled that it should be killed because that was the purpose of its creation. It was not until he showed significant mercy to animals that he was cured of his painful ailments.

The rabbis (in *Eruvin* 100b) even went so far as to suggest that animals themselves have moral attributes that we can directly learn from. “If the Torah had not been given, we could have learned modesty from the cat, honesty from the ant, chastity from the dove, and good manners from

the rooster, who first coaxes then mates.” Natural law, and animals, can be great teachers of virtue.

The halakhot of kosher slaughtering can help to ensure that animals are treated more humanely. Those laws concerning the separation of milk and meat, Rav Ephraim Luchitz suggests, are designed to limit meat intake and cultivate a spiritual awareness of how one consumes animal products.¹⁴ Interestingly, while there are special blessings designated for bread, wine, fruit, and vegetables, there is no special blessing reserved for the consumption of meat. Could a blessing be made if we were truly spiritually conscious of what we were consuming: “*haMotzi basar min haHai?*”

How far must we take these sensitivities? Some choose not to hunt, others to limit meat intake, while others refrain completely. How can the Torah guide us?

Vegetarianism and Halakha

Vegetarianism has been a growing trend in the American Jewish community for the past few decades as the Jewish community has become more educated about the detrimental effects meat production has upon human health, animal suffering, the environment, and global hunger. Well-known statistics demonstrate how much food in developing countries, later shipped to the United States, has gone to feeding cattle, rather than impoverished humans. This reality is due to the fact that cattle around the world consume an amount of food equal what 8.7 billion people need. Even further, cattle in the United States consume ten times the grain that Americans themselves eat.¹⁵

Over 200 million Americans are eating enough food, much of which is grain-fed livestock that could feed over one billion people in developing countries.¹⁶ Jean Mayer, a Harvard nutritionist, claims that 60 million hungry individuals could be fed if people reduced their meat intake by just 10 percent.¹⁷ Exploring the details of these serious harms to human health, poverty, animal treatment, and the planet are beyond the scope of this article. Our question here is: How do halakha and Jewish ethics look upon vegetarianism for those who feel a moral obligation to limit or cease their meat intake?

A Gemara (*Sanhedrin* 59b) frames the biblical history of vegetarianism quite succinctly: “Rav Yehudah stated in the name of Rav, ‘Adam was not

permitted meat for purposes of eating as it is written, ‘for you it shall be for food and to all animals of the earth,’ [Genesis 1:29] but not animals of the earth for you. But when the sons of Noah came (God) permitted them (the animals of the earth) as it is said, ‘as the green grass I have given to you everything,’ [Genesis 9:3]” We can suggest that the biblical history of meat consumption experienced three distinct eras. In the Garden of Eden, humans did not consume animals (era 1). After the flood, God saw the violent and sinful nature of humans and permitted meat consumption as a concession (era 2). We then learn that meat was only permitted as a sacrifice to God and then ultimately it became permitted outside of sacrificial worship as well (era 3). These three eras mark an evolution from an ideal to a religious pragmatism. I would argue that with the advent of mass production and corporate factory farms that we have entered a fourth era, one that requires a new religious perspective on the consumption of meat (to be explored below). We now must ask whether *shehita* (ritual slaughter) in an age of mass production has lost its sanctity. Rabbi David Rosen, the former Chief Rabbi of Ireland, wrote¹⁸ that “The current treatment of animals in the livestock trade definitely renders the consumption of meat halakhically unacceptable as the product of illegitimate means.” Rabbi Rosen argues that in theory kosher meat is perfectly kosher and acceptable to consume—but that in today’s system of mass abuse, it is no longer kosher, that is, no longer fit for consumption. He goes on to suggest that “In contemporary society, more than ever before, vegetarianism should be an imperative for Jews who seek to live in accordance with Judaism’s most sublime teachings.”

The Gemara (*Pesahim* 49b) declares that an ignoramus may not eat meat. The Maharsha explains that if one is not extremely knowledgeable and pious, too many mistakes can be made. The Rama (*Teshuvot Rama* 65) argued that an ignoramus is not well-versed in the laws of *shehita* (ritual slaughter). In addition to scrupulousness in kashruth, it seems that one would need to be a very ethically conscious person to truly appreciate what goes into meat production today. The Talmud (*Kiddushin* 56b) taught that a consumer is more culpable than producers in a certain sense. The demander of a certain product that harms (i.e., the consumer) is really the one responsible for the pain caused.

At least two Rishonim also view vegetarianism as a moral ideal. R. Yitzchak Abarbanel¹⁹ and R. Yosef Albo²⁰ both suggest that it is a moral

ideal since the slaughtering process can lead one to cultivate cruel character traits. In the early twentieth century, Rav Avraham Yitzchak HaCohen Kook argued for the eschatological ideal of vegetarianism.²¹ Even though certain ideals won't be fully actualized until the messianic era, Jewish theology instructs that the Jewish people must act in spiritual and moral ways that attempt to bring the messianic ideals to reality. The book of Isaiah in its prophesy for the messianic age (11:6, 8) famously teaches that even animals will be vegetarian: "The wolf shall dwell with the lamb, the leopard shall lie down with the kid. And the lion, like the ox, shall eat straw." The S'dei Hemed suggested, in a different vein, that refraining from wine and meat consumption can be a positive practice to expiate sin.²²

It is important to note that with the Torah's full permission to allow the consumption of kosher meat, it did not become an obligation to consume meat. Rather it grants permission for those who desire it. The Torah says "you say: 'I will eat meat' because your soul desires to eat meat; with all the desire of your soul may you eat meat" (Deuteronomy 12:20). Meat may be consumed when there is real desire—but there is not a need to consume it if there is not desire, and certainly one need not eat meat if one finds it repugnant (physically, morally, or spiritually). The Gemara (*Hullin* 84a) goes even further in explaining this Torah verse and states, "A person should not eat meat unless he has a special craving for it." Rabbi Shlomo Riskin, the Chief Rabbi of Efrat, has written that "The dietary laws are intended to teach us compassion and lead us gently to vegetarianism."²³ The sources show that one need not eat meat. The three valid positions are that it is: 1. Permissible to eat meat; 2. Permissible not to eat meat; 3. Ideal not to eat meat.²⁴

Stranger today still, within a very anthropocentric worldview, some have also argued that it is ideal to eat meat since animals were merely created for human purpose. This seems to be a very narrow view, and flies in the face of the interpreters of the Torah's values and the *bediavad* (un-ideal) evolution to finally allow meat consumption. When animals were created in the beginning of the book of Genesis, it is clear from the text and commentaries that they were *not* created for human consumption.

A very peculiar Orthodox culture has evolved in certain segments of the Jewish community that sees the consumption of meat almost as a marker of *frumkeit*, and that any religiously observant individual should feel obliged to engage in a hedonistic consumption of meat and that any

truly religious celebration must have meat, especially on Jewish holidays. This desire has taken priority in many communities over religious virtues and the spirituality of the joyous occasion.

Simhat Yom Tov?

Some have claimed that even if one chooses to be a vegetarian during the week, it is not permissible to refrain from meat on Jewish festivals since we are obligated in *simha* (joy) and “*ein simha ela basar veYayyin*” (there is no joy without meat and wine).

To treat this approach as conclusive is incorrect. Halakha takes the notion of *simha* (joy) very seriously and does not enforce practices that individuals do not find joyous. Furthermore, for many posekim, the consumption of meat as a fulfillment of the mitzvah to be joyous on holidays existed only in a historical context. The Gemara (*Pesahim* 109a) reads: “R. Judah ben Beteira declared, ‘During the time that the Temple existed there was no ‘rejoicing’ other than with meat as it is said, ‘and you shall slaughter peace-offerings and you shall eat there; and you shall rejoice before the Lord your God.’” R. Judah ben Beteira goes on to conclude “but now that the temple does not exist there is no rejoicing other than wine.” Another Gemara (*Pesahim* 71a; *Baba Batra* 60b) explains that the obligation to be joyous on festivals was not fulfilled through the consumption of meat but through the wearing of clean clothes and drinking of wine. Medieval Jewish legal authorities held that there is no longer any obligation to consume meat on festivals.²⁵ Some Rishonim go even further to argue that eating meat was not even an obligation in the times when the temple stood!²⁶ Based upon these sources, the Bet Yosef questions those who suggested that one must eat meat on festivals.²⁷ The Magen Avraham²⁸ explains explicitly that there is no obligation to eat meat on festivals since the temple was destroyed.²⁹ Although there are posekim who require the eating of meat on festivals, there ample basis to refrain if one will not get enjoyment and spiritual satisfaction.

It is now time that those committed to halakha and living an ethically conscious life stand and courageously articulate their vegetarian convictions. At the Shabbat table, one may ask: “How can you forbid something that the Ribbono Shel Olam permitted?” or “How can you cast aspersions on our ancestors?” or “How can you possibly experience *oneg* and *simhah*

on Shabbat and Yom Tov without cholent and brisket?” Halakhic vegetarians can and should proudly quote the Torah sources without feeling any shame for their ethical convictions.

Conclusion

After fleeing from Poland during Nazi persecutions, Nobel laureate Isaac Bashevis Singer argued that animal rights were the purest form of social justice, since animals are the most vulnerable of beings. Our moral response to factory farming is a test of how we respond to the cries of the voiceless and powerless in our world.

According to Jewish tradition, humans were imbued with a level of dignity that is not granted to animals. However, elevating humans to a unique existence with special rights and obligations does not preclude the possibility for some level of rights and obligations to exist for animals nor does it call into question humans as the pinnacle of existence. In the twenty-first-century nation-state, we must consider seeing sentient beings as holders of rights imbued by divine laws and confirmed by human law. It has become apparent that the new age of mass production in factory farms immensely violates *tsa'ar ba'alei hayyim* (the Torah prohibition against inflicting pain upon animals). One may no longer plead ignorance—only indifference. In addition to the cruelty of how these animals are caged, fed, tortured, and slaughtered, new findings have shown the detrimental effect that meat consumption has upon human health. Additionally, in a major recession where our charity is needed more than ever and as meat prices increase, this luxury of meat products may need to be the first thing to go from the shelves of a truly pious home. However, this is not an ascetic ideal. Alternative meat options are now more similar in taste to meat, accessible, and affordable than ever. In an age where vegetarianism must be viewed as a halakhic and Jewish ethical ideal, it must be considered as part of our pursuits in striving for truth, justice, peace, and holiness.

NOTES

1. Genesis 1:26, 1:27.
2. Or the possibility of embracing Sartre's notion of existence over essence; that there is something beyond the phenomenological grasp in a human existential encounter.
3. Genesis 1:26, 1:28.
4. *Moreh Nevukhim* 3:13.
5. Descartes, René, "Meditation on First Philosophy and the Discourse on the Method," cited in *The Oxford Companion to Philosophy*, (Oxford University Press, 1995), pp. 188–192.
6. Richard Ryder, *Animal Revolution: Changing attitudes towards speciesism* (Berg, 2000), p. 49.
7. *Frontiers of Justice*, 179.
8. Deuteronomy 22:6–7, one must send away the mother bird before taking the young.
9. *Moreh Nevukhim* 3:48.
10. *Baba Metsia* 32b; see also: Rambam *Hilkhot Rotseah* 13:9.13 and *Hoshen Mishpat* 272:9–10 with Gra.
11. *Iggrot Moshe, Even HaEzer* 4:92.
12. Rama, *Yoreh Deah* 60:1.
13. *Sefer Hassidim*, paragraph 142.
14. Kli Yakar.
15. Boyce Rensberger, "Water Food Crisis: Basic Ways of Life Face Upheaval from Chronic Shortages." *New York Times*.
16. Ron Sider, *Rich Christians in an Age of Hunger*.
17. Jean Meyer, *US Senate Select Committee on Nutrition and Human Needs: Dietary Goals for the U.S.*
18. "Vegetarianism: an Orthodox Jewish Perspective," p. 53.
19. Commentary on Genesis 9:3.
20. *Sefer HaIkkarim* book 3 chapter 15.
21. *Iggerot Re'iyah*, book 2, 230.
22. *Asifat Dinim ma'arekhet akhilah*, section 1.
23. *Jewish Week* (New York, August 14, 1987), p. 21.
24. At least *lifnim mishurat ha'din* (ideal above the letter of the law).
25. Ritva on *Kiddushin* 3b, *Teshuvot Rashbash* no. 176.
26. *Tosafot Yoma* 3a, *Rabbenu Nissim Sukkah* 42b, *Hagigah* 8a.
27. *Orah Hayyim* 529 (questions the Rambam and Tur).
28. *Orah Hayyim* 696:15.
29. Rabbi J. David Bleich points out a contradiction in the Magen Avraham (*Orah Hayyim* 249:6, *Orah Hayyim* 529:3).

Jewish Business Ethics in a Secular Society: A View from the Trenches

STEPHEN P. RAPPAPORT

(Stephen P. Rappaport is the author of Management on Wall Street, (Dow Jones), the first book on managing securities firms; The Affluent Investor, (Simon & Schuster), the first book on portfolio management for this investor group; and Municipal Bonds, (McGraw-Hill), the first book on the municipal bond market, among others. He has spent 30 years working at Wall Street firms and has been a Fellow in neuro-imaging, functional neuro-radiology.

Mr. Rappaport was a Captain in the U.S. Air Force and is a member of Congregation Shearith Israel in New York City.)

No single topic in contemporary society today elicits more concern, consternation, conflicting opinions, and simply outright indignation than the business ethics of modern-day “masters of the universe,” whom many view as ethically—if not directly—responsible for the current problematic economic plight of many people, countries and, by extrapolated consistency, the entire global financial system. If they had only followed basic Jewish business ethical principles and practices, so the argument goes, perhaps we would not be where we currently and precariously are within the turbulent and, to a rather extensive degree, virtually uncontrollable financial straits. Yet, what these precise prescriptive ethical practices are, drawn from times long ago, and how they apply to modern-day financial econometric systems and actors within those arenas is surprisingly elusive in the present seemingly vast corpus of Jewish business-related literature. The material, unstructured at best and obtuse at worst, leaves much to the financial imagina-

tion, deals only tangentially with situations of relevance today, and does little if anything to shine light on the interstitial tissue connecting the fragile financial joints upon which the world's economic system is buttressed.

*"If you can't explain it to your grandmother,
then you cannot understand it yourself."*
—Albert Einstein (1879–1955)

Setting what might be termed as parametric boundaries, to borrow an applied science expression for literary purposes, is really the very first task of formulating any exposé and, in the case of the what some might call the galactic financial shenanigans of the last few years (which need no further explication here), nothing could be more important to navigating us on the right strategic course for this article and, for argument's sake, making it readily understandable.

First and foremost, let's set forth what we will not deal with herein, under the logical arguments that both less is more and excluding the questionable but obvious allows readers to quickly take stock of where we are headed. To begin, we will not deal with financial crimes: These are not ethical issues; they do not involve questions of judgment; they do not afford the perpetrator the protective penumbra of self-defense; and, more often than not, they have within them issues of psychiatric dimensions with which we are totally unprepared to deal, nor should we be. Finally, "You shall not steal," in Jewish liturgy and absent a life-threatening situation, is a clear enough stricture for any functioning adult to understand. Need more be said?

Second, we will not fit the world of Jewish ethics, largely derived from biblical and talmudic edicts, situations, and commentaries, to the world in which we live today. This has been the schematic of virtually all research in the field done to date, and unfortunately, grafting arcane examples onto real-world situations results in two contemporaneous analytical problems.

Most objectively, on a quantitative basis, there are a finite number of business-related ethical issues dealt with in the vast amount of Jewish literature. For instance, of the 613 precepts in the Torah, only about 100 deal with economics or business, which may, in itself, seem like a statistically significant number, but for codifying Jewish business ethics within the behavioral crevices of, say, the financial community where so much attention has been directed—and no doubt deservedly so—these specific refer-

ences do not really cover much applicable ground. Even if we distill what, at first blush, seems to be a mountainous amount of material related to the way we are expected to conduct ourselves, both in general commerce and in one-to-one business transactions, we still remain bereft of the most salient ethical issues in business and intra-office relations with which we are faced daily.

In a secondary sense and one that logically follows, the literature, as it is presently crafted, employs self-selected anecdotal material with little strategy and less structure as a venue to craft an overarching theory of Jewish business ethics. Making matters decidedly worse is the simple fact that helicopter rides with periodic landings on predefined biblically derived targets in an effort to illuminate the hard to make choices in contemporary business—which are often simply well beyond really tough calls in themselves—preordain additional problems. The approach taken in this article will be totally the obverse and, as a result, should be far more useful and decidedly more understandable, to come full circle in this section.

“If everyone is thinking alike, then nobody’s thinking.”

—U.S. General George S. Patton, Jr. (1885–1945)

Put differently, rather than fitting Jewish ethical theory to modern-day business fact (as those before us have done), we will reverse the trend here and do so in a historically business-like manner. Legendary Harvard Business School Professor Alfred Chandler got it right long ago, and his preeminent managerial dictum—often applied to a sweeping array of related situations—should also hold sway here. Propounding the proposition that the structure of a business enterprise must, of necessity, follow its strategy and more specifically, a company’s strategy must first be developed so the structure to carry out that strategy can then be effectively formulated, Chandler’s defining organizational principle will guide the construct of this article in the following way.¹

Our strategy here is simple one: to find a methodology, approach, process, procedure, and/or technique that will allow for the infusion of Jewish ethical principles into real-world business vistas so that—and here is the critically important part of the strategy—decision-making can be enhanced by those confronted with, and indeed often confounded by, ethical dilemmas that seem exceptionally, and at times excruciatingly, difficult

to resolve. Moreover, they are also often aggravatingly intractable because, when viewed through the prism of a strict adherence to broad Jewish ethical principles, business or otherwise, Jewish members of the business community often feel left in the lurch of a Judeo-legal straitjacket of rules so broad and iconoclastic that they allow little room for the freedom of defense in business situations requiring fundamental ethical decision-making. This enigma gives appropriate rise to the structure of this article, to continue through on Chandler's managerial paradigm.

Strategy defining structure, or at the least, formatting it means that, in this case, we have to develop two fundamental but complex perspectives. The first structure is an overall compendium of what is and is not allowable under Jewish business ethical standards in broad terms, so that applications to contemporary situations can be readily made and prescriptive behavioral responses may more easily be pinpointed. The second structure is a real-world framework of business ethical pressure points that involve clients or customers and shareholders, on the one hand, and business colleagues in the workplace, on the other. In this way, we can view Jewish business ethical standards applied in real-time and in situations that are not constrained by a hodgepodge of self-selected biblical precepts—many contrived to a greater or lesser degree—for situations masquerading as real-world problems that do not come close to adequately reflecting the complexity inherent in the world as those who live in the trenches know it to be.

“The test of a first rate intelligence is the ability to hold two opposed ideas in the mind at the same time, and still retain the ability to function.”

—F. Scott Fitzgerald (1896–1940)

Somewhat surprisingly, an in-depth analysis of Jewish literature in all its forms leaves those operating within the confines of contemporary business situations in something of an ethical bind, as previously noted, and it is difficult, if not impossible, to amble through international business society without a conscious concern that doing “x” as opposed to “y” or vice versa—and we will later discern in great detail what these ethical alternatives could be—would leave one either defenseless or abrogating a major Jewish ethical principle. Here is where many of today's writers, commentators, and self-described analysts of the material become somewhat unglued, and they do so in rather significant ways.

For instance, we are taught not only what is ostensibly perceived to be right in all ethical matters, business and otherwise, but also and most importantly, that there is hardly anything remotely negative that we can do or say to and/or about our colleagues that is permissible. This is the clear impression with which one is left after any reading of what purports to be Jewish ethical law. Many of these familiar principles will be enumerated below so that we are able to develop a functional methodology of defining what these strictures are and how and in what ways with which they should be dealt. Once again, this will neither be done by a willy-nilly reiteration of ancient business situations with vague and often contorted applications to today's world, nor will it be accomplished by a recitation in biblical proportions, no less, of talmudic dictums so alien to modern businesspeople that it requires an imagination of science-fiction dimensions to apply those concepts. What we will do, however, to hearken back to Chandler's charge, is take major Jewish ethical principles for structural purposes and compare them against extreme cases where there is discernible leeway for executing correct ethical strategies in business without violating major Jewish behavioral prohibitions. To be sure, this requires the holding of opposed ideas in mind at the same time in order to provide a structural platform for decision-making under varying conditions of risk and uncertainty in ethical situations. Useful guideposts we need, fitting round pegs into square holes, we need not, so we are off to the ethical races here, at long last.

*“The capacity of the human mind for formulating
and solving complex problems is very small. . . .”*
—Herbert Simon (1916–2001)

As a result of this condition, argued Simon in his Nobel Prize-winning thesis, decision-making by human beings—most notably economically driven issues—are decided through what he termed an individual's “bounded rationality,” namely, the cognitive limits of their own minds.² Leaving aside for a moment the extraordinarily sophisticated applied non-linear mathematical models derived, over recent years, by systems thinkers such as John Sterman of M.I.T. to obviate the limitations of our neurobiological selves, we still must devise a structural framework here that deals with Jewish business ethics in ways that our human minds are capable of comprehending.³ In other words, we have to reduce the incredibly large num-

ber of business-related and ethically challenged situations to a digestible number and place them within a framework that we can understandably grasp.⁴ Consequently, and as alluded to above, we will bifurcate the concept into its basic two broad categories.

The “do’s and don’ts” of Jewish ethical problems are legion, and we really do not need any further outpouring of talmudic examples to reinforce that overly apparent fact. Nevertheless, just for the record and for the purposes of this article, let’s outline the basics so that we can more fully comprehend what they are and how they break down into their two broad dimensional components: what is expected of us in our ethical lives and what is expected of us in business. Subsumed within these categories are overarching principles, but they engender incredible ethical decision-making problems if adhered to strictly. So basic, however, is fair dealing in business regarded in Judaism that it almost invariably, and to a very large extent, virtually overpowers all else in our personal lives, presumably because involved within it are highly personal interactions of the most fundamental sort. We should certainly start there first.

“Whoever conducts his business dealings honestly is liked by humankind, and it is considered as though he observed the entire Torah” (Mekhilta, Exodus 15:26). Business dealings coupled with honesty—what more in the Jewish world could be said? The follow-up is indeed appropriate. “The first question an individual is asked in the afterlife at the final judgment is ‘Were you honest in your business dealings?’” (B.T., *Shabbat*, 31a). So it goes on even after we’re gone! Honesty is everything here, but it is sculpted overall by its formidable counterpart in Jewish ethical life.

Indeed, the key and broader ethical principles over which we run afoul are also two in number. Inching up the pyramid is one critically important Jewish ethical stricture, so sweeping, so profound, and so abrogated in so many human interactions virtually all day long that it is hard to conceive of anyone actually towing the mark on this one for any reasonable length of time, let alone full-time in the often ruthless world of business. Some people, for instance, could hardly get by without hurdling over its high watermark anywhere on a daily basis. Yet here it is—a major Jewish ethical edit that seems almost impossible to live by. In all its forms, it is essentially *lashon haRa*, which has some strange prohibitions within it. Let’s explore this precept in all its encompassing aspects and apply it to

real-world business situations, because that is where the Jewish ethical business rubber quite often hits the real-world business road.

The Torah states with great finality: “You shall not go about as a tale bearer among your people” (Leviticus 19:16). As is generally perceived, a so-called tale bearer is an individual who essentially says anything about anyone, but who still transgresses this commandment even if what he or she says is true, and furthermore, this is so even if what is said is complimentary because this actually implies a true knowledge of what is good, i.e., a higher, grander, more knowledgeable level of perspective, if you will. Somewhat parenthetically, I suppose it is worth mentioning that, according to Jewish tradition, the spreader of falsehoods is regarded as right at the bottom of the moral barrel, as it were—a *motzi shem ra*, or a moral leper. So think twice before you twist things; it’s surely not worth it, but that is not why we are pursuing this line of thought.

Right at the Jewish pyramidal top, if you will, sit two inextricably linked prescriptions, so broad that, when taken together, they leave little wiggle room for advancing one’s cause in business or anywhere else for that matter. “You shall not take revenge” (Leviticus 19:18) is actually a commandment in the Torah. Even more transcendent is: “What is hateful to you, do not do to your fellow human’ that is the whole Torah, the rest is commentary,” (Hillel, B.T., *Shabbat* 31a), which implements, “And you shall love your neighbor as yourself” (Leviticus 19:18).⁵

These are our basic Jewish parameters. They are what the human mind can absorb and precisely what Jews the world over have come to believe as actually the minimum of behavioral standards upon which the platform of our lives are explicitly required to be built. In the Jewish world more than any other, there is very little authoritative differentiation between religious and societal norms, of which business is an inextricably woven composite part, and perhaps that is the way that it should be—at least in the opinion of this writer. To the extent that the thousands of examples of business dealing ethical parameters are, by example, embedded in Jewish liturgy and, by way of extension, so are related examples of a more general ethical dimension, they serve more as in-depth calling cards, to be employed when specific situations warrant them. Make no mistake, however, what we have isolated above are so fundamental that any further examples or principles would surely swamp our neuronal synapses, so we will happily stop here.

Nevertheless, the point to be made is that when squeezing these Jewish ethical prescriptions into the funnel of our behavioral pyramid, they cover such a vast array of activities and interfaces that a Jewish person often feels truly bereft of any reasonable recourse to defend him or herself against those seeking to advantage themselves in the competitive milieu of business today. Both what the intricacies of these situations entail and what some would consider normal behavioral responses that fly in the face of Jewish ethics, are our next tasks.

*“Everyone takes the limits of his own field of vision
for the limits of the world.”*

—Arthur Schopenhauer (1788–1860)

In the complete spirit of reductionism and much like we distilled the principles of Jewish ethics—present business precepts included—down to an understandable and frankly usable format, we are compelled by an objective and comparative necessity, to do the same with contemporary business situational paradigms and the ethical dilemmas they pose. We do this so that we can see exactly what we can and cannot do within the confines of Jewish business ethical standards and, concomitantly, in what ways we can legitimately respond in such situations without demeaning our religious heritage, principles, practices, and moral standards that many have sacrificed dearly to preserve so that, often in a literal sense, we may have all lived to see another day—a theme to which we will return to hit head-on at the conclusion of this article.

Moreover and in reference to the above captioned quote, we offer a real-world kaleidoscopic view of business situational difficulties from the trenches so that our readership can readily grasp the complex and intricate nature of these interpersonal relations in ways that were not apparent previously. In order to expand their vision of the business world on the one hand, we have to reduce, to an understandable format, a global perspective of the business world, on the other. This, as they say in some business sectors, is job one. Then, in order to precipitate out from the critical crevices where the most problematic ethical situations lie, we have to present real-world examples of these in the broad context of the previously described global business milieu. By necessity, we all need to be on the same page here and expand our vision to match that of the world, as noted in the above quotation.

Stephen P. Rappaport

“There is only one valid definition of business purpose
and that is to create a customer.”

—Peter Drucker (1899–1995)

These words of Peter Drucker, perhaps the world’s most celebrated management scholar ever, live on today and bear particular applicability not only to what we must explain here, but also to how we do it. (Of some consequential note, the November, 2009 issue of *Harvard Business Review* was dedicated to Drucker on the centennial of his birth, but quite circumspectly and in underscoring the financial crisis of the day, asked readers right on the issue’s cover and as its title: *What Would Drucker Do?*). Nonetheless, whether they are product or service companies, the creation of a customer is the *sine qua non* of business, and from both a purely managerial viewpoint and for our own organizational purposes, a global outline of the framework, functions, and factors impacting customer development is surely in order.

There is really no managerial business scholar and/or management consultant who has better encapsulated the whole of competitive business strategy than Harvard Business School Professor Michael Porter, so to rely on any other basic material for a bird’s-eye view of this complex subject is really quite silly. To be sure, all of this author’s opus-like compendiums are implicitly directed toward achieving Drucker’s foremost goal of customer acquisition, but what is generally involved in conducting a modern business enterprise certainly deserves a few sentences courtesy of Porter’s most well-known treatises.⁶ Furthermore, this information is required in order to build a foundation for our more formidable discussion of business ethics in the context of Jewish business principles.

Porter captures industry competition along the bargaining power of buyers and suppliers, the threat of new entrants, and the potential for substitute products and/or services. All of these impact on the rivalry among existing firms, but the three key elements that drive the competitive strategies of companies are, by Porter’s analysis, products that have the lowest cost, greatest differentiation, and the sharpest focus on a given buyer group. These are the basics of the corporate form of organization and are the essential theoretical framework upon which strategy is developed and then structure is created. They define the internal order of things, as it were, that Porter underscores from an organizational standpoint, and we need to quickly get a sense of that organizational paradigm to deal with

the ethical decisions that spew forth from its construct and “create a customer,” to coin Drucker’s most famous phrase.

Digging deeper here and approaching this area from a somewhat oblique angle, it may be worth noting that we strive in many scientific disciplines, and presumably in virtually all aspects of our short-lived mortal days, to achieve a clarity of focus in what we both professionally and personally attempt to accomplish. There is surely no argument about this here. In the neuroscience field and more specifically in neuro-imaging, we are continuously trying to achieve greater image quality—clarity, if you will—through a scientific combination of better spatial and temporal resolution, which often means a balancing of one in favor of the other. By analogy then and to run through deeper still waters, Porter clarifies his organizational construct by disaggregating the modern company into a series of discrete activities along a value chain that gives rise to the company’s competitive advantage in the marketplace. In order to capture and sustain a company’s advantageous market position, its various divisions, from product development to marketing, from research and development to sales and service, and so forth, he argues, must operate as a cohesive whole, while at the same time, the project teams within those units must do the same. This sounds simple enough, but the execution of this charge presents all kinds of business ethical problems with which individuals and managers must inevitably deal. In order to attain greater clarity—to continue the analogy one logical further—of the entire corporate dimension, we therefore inexorably move one more step forward and divide our ethical business paradigms, for prescriptive analysis, into two comprehensible arenas: the company’s shareholders (the external dimension) and the company’s employees (the internal dimension).

If the single purpose of a business is to create a customer, as Drucker persuasively argued many years ago, one of the more recent market-related resultant effects that, not surprisingly, subsequently became a corporate goal in and of itself, was the focus on the creation of shareholder value as the primary motivating business force.⁷ We are talking about a company’s stock price here, regardless of the vicissitudes of the market itself, and this strategic goal was further refined to target the company’s quarterly financial performance, which would then, ipso facto, presumably be related to its stock price. Putting an even finer point to this ongoing financial saga is the simple fact that, over recent years, it appears by all accounts in the

news that ethical transgressions occurred with a view toward bolstering profits and the resultant share price of a given company. Why is this so important? It is simply because bonuses, job longevity, and corporate bravado made it so. As an inevitable result, we find ourselves amidst the daunting modern-day challenge of hewing to Jewish ethical principles and practices so seemingly far-reaching while, at the same time, so behaviorally restrictive, that we feel discernibly pinched between the need cut quarterly corners for the good of the company and its shareholders, on the one hand, and adhering to our basic faith, on the other. Clear examples of the tension in this external dimension will follow the exploration of the internal workings of the modern corporation and the consequent effect on what is essentially human interaction and behavior.

Catapulting ourselves into the inner workings of corporate America—often even at its highest levels—is shockingly not unlike any other interpersonal situation where pay and recognition rule the day and, sometimes as we have all found, to the actual detriment of—and to tie in the framework described above—the company, its stock price, and the company’s shareholders. Indeed, we all acknowledge and know well how major corporate entities of all types have floundered as a consequence of questionable business ethical behavior sparked by nothing more than outsized financial rewards hung as bait for select scrambling employees to devour. It is right here, however, in the rush for personal gain amongst fellow workers (usually constructed around a project team orientation) and the prospect of increasing corporate profits in the most notable short-term—quarterly, for instance—that breaches in business ethics occur, and, more often than not, they involve ethical assaults on colleagues and, to wit, Jewish principles, which leaves us and our families wanting. It is therefore to this nexus of nothing more than money and politics that we direct our attention.

*“ . . . the character of every act depends upon
the circumstances in which it is done.”*

—Justice Oliver Wendell Holmes, Jr. (1841–1935)

Crafting a series of representative scenarios involving compromising business ethical situations is a reductionist game, and we have to adhere to our basic outline, which includes making certain that the ultimately derived principles of behavior fall within our predefined framework. Broadly con-

strued, this real-life paradigm remains bounded by both the external corporate dimensions of Americana and its internal project team counterpart as well as their resultant prescriptive nature, defined so that we can learn something useful when common-day ethical dilemmas are compared and contrasted with Jewish ethical standards as applied to the business milieu in which we all operate. And it should come as no surprise that, to a greater or lesser degree, we actually all do. Both dimensions intersect in that actions in one arena, say, inside the company and the sometimes derivative internecine warfare that results, affects shareholders and stock price alike, but bisecting them into discrete components should help in bringing the complexities of ethical decision-making into a more focused perspective. To borrow from the above quotation, each of these circumstances impacts on the character of each ethical decision when placed under the Jewish microscope.

For starters, we begin with the well-spring of business today: the individual worker and those around him or her, or more notably termed, the project team. If there ever were seeds of ethical discontent planted, it was right here, and these teams—small to large, transient to ongoing, at the highest or lowest levels of the organization—is precisely where the damage is done to business ethics, sometimes on a grand scale and at almost incalculable personal and corporate cost. Few, however, see it that way, and for those making even the vaguest of attempts at staying under the rather wide umbrella of ethical Jewish behavior, life can become close to unbearably uncomfortable.

Transcending the internal boundaries of corporate departments of all stripes—whether they are marketing, finance, information technology, legal, or even human resources—is the not too terribly transparent nature of the project team vis-à-vis the department or divisional head. Without being too thinly veiled about its driving force, at least from the standpoint of each team member, it is no doubt sufficient to state that individual input maximization in recognition form is surely the goal and making the division's "top dog" aware of one's input, however sometimes exaggerated, is clearly enough to begin turning the tables on one's colleagues. One could argue that this is human nature, of course, but the often inevitable result is often the downplaying of contributions to the project made by other team members, which morphs into the demeaning of colleagues and, with that, so many basic previously enumerated Jewish ethical principles—

business and otherwise—are crossed that it is almost pedantic to reiterate them. As a perpetrator, no further repudiation is warranted here; we know with whom we deal. As a defendant, however, we are up against a “hard break,” if you will, with the Jewish prescriptions cited so far in this article leaving us with little recourse. There is surely no room to maneuver if we cannot speak in any way about anyone, to cite just one restraining Jewish stricture. Moreover, if our income is at stake, if our employment is up for grabs, or if our self-esteem is continuously trodden, being on the short-end of the project team stick is a tough place for an observant Jewish person to find oneself—at least the way we know one generally to be. This is just one example, albeit an absolutely critical one, but time and space do not allow for the enumeration of others within the confines of the our present-day business world, so we will conclude the internal dimension here, if only to proffer some hopefully reasonable answers later.

Neatly wedged between the internal infrastructure of the modern-day corporate form of enterprise and that which directly effects corporate profits and shareholder price, but has within it ethical dilemmas so fundamental to our way of life that it is comparably hard to extract similarities between it and anything else that we may do in business, are the functions that involve direct client and/or customer contact in a sales capacity. These activities, by their very existence, are almost always incentivized by remunerative arrangements that tag sales performance to pay; how could it be otherwise? More specifically, clients, across the board are of two intellectual stripes: those who are individuals and who are generally expected to know far less about the product or service being purveyed and those who are institutional or corporate purchasers, a group generally perceived to have the knowledge to make reasoned sales decisions or, at the very least, to have access to sources of information that will ultimately allow them to make decisions of a fully informed nature. Time has shown, however, that this intellectual dichotomy is not universally the case, so that if a salesperson were to be ethically consistent—reasonably guarding against any buyer’s lack of product knowledge so that taking advantage for a sale’s sake was obviated—sellers would treat all buyers as individuals without the knowledge and/or resources to do the kind of in-depth due diligence of the institutional professional. That said, it actually becomes more incumbent on those sales professionals interfacing with any buyer to position the product or service for sale

as exactly what it should be: a customer need, absent the remuneration and/or commission for the sale. Now ethically, this is one tough nut to crack, especially when the salesperson's livelihood depends on the sale and the internal organizational pressures encouraging the sale itself loom large—hopefully, a delicate, but realistic way to put the latter premise. For the moment, we will leave this business ethical predicament in abeyance; we have our hands full as it is, and the character of the act in each of the attendant circumstances is done needs to be addressed accordingly.

The signature ethical impasses encountered in business today, however, have their genesis in actions that affect the company in visible ways—namely, its profits, share price, shareholder value, and as we have learned throughout this decade, the financial viability of the company itself. We have termed this the external dimension, but unmistakably, the seeds of these conundrums are sown internally within the same organizational frameworks that define the parameters of project teams at any corporate level. The difference is that these decisions, together with their ethical counterparts, involve the allocation of corporate resources on a grand scale, with the final go-aheads made at high levels of the organization, and as we have found sometimes, without all of the facts illuminated or with a shading or burying of the potential, but somewhat less apparent, risks—all in the name of potential pecuniary gain for the proposers. At times, it apparently seems that the use of what is commonly described as “other people's money” knows no bounds.

What business actions could possibly precipitate such a wholesale problematic effect on a company of any notable size? A merger decision for one, a strategy to sell a division for another, or the purchase of a major company, the leveraging of a firm's capital base, the marketing launch of a major product, or the research investment of a drug, for instance, and the list goes on. They are not subsumed within the body corporate, nor are they enveloped within the recesses of the corporate hierarchy. Rather, they are front and center, standing astride the upper level project teams and the company's most senior executives. Every corporate player has some stake in the decision-making process here, but throwing caution to the wind, while not the rule but rather the exception, is so often shrouded in minimizing the risks inherent in the process while emphasizing the potential gains if all goes according to an optimistic plan that one often wonders

whether the ultimate decisions are so biased in favor of potential and personal monetary gains that corporate risk parameters have been diffused into oblivion. Given the input from the usual suspects of sources and the committee-like nature of the decision-making process—project teams writ large, to be sure—it is comparatively easy understand how exculpatory rationales, coming the wake of some unintended consequences, afford major corporate decisions, in effect made by top-level teams, seem not only well reasoned, but also unanticipated, given what could be termed the arguably sound research and analysis that went into the deficiently executed strategy.

Let's put a somewhat different spin on the ball here because this topic is vitally important, and indeed has been, and continues to be, the notorious focus of business practices from the standpoint of ethics evaluations in the recent past simply because so many companies have either financially collapsed as a result or have come so perilously close that emerging unscathed has been almost miraculous. What we are saying here is that ethical lapses have occurred by those who have turned the other cheek in the face of possible catastrophic results coming from decision-making at the highest levels of the organization, and further and most profoundly, those hypothetically involved may actually, and somewhat insidiously, have transgressed Jewish ethical principles and differentially insulated themselves from the process. After all, who wants to get skewered by a firm's top-level management committee? Nevertheless, how and in what ways this could have been avoided will be handicapped in the next section.

"It's hard to beat a person who never gives up."

—Babe Ruth (1895–1948)

Rather than throw in the towel and walk away from our ethical dilemmas that, in reality, only serve to magnify the encountered problems sometimes often well beyond our ability to cope with them through Jewish strictures or even otherwise, we shall meet them head-on, but this requires navigating the labyrinth of Jewish principles, fortunately distilled down, by at least one notable writer, in ways that we can prescriptively apply in business. To refresh our memories here, it may be wise to recall some of the most basic principles of ethical behavior in the Jewish tradition, both generally and as applied to business, appeared to leave us handcuffed in situ-

ations involving our need to defend ourselves, point out ethical conflicts to others, and on a much larger scale, take positions that would protect the sanctity of the firm, its value, and the investment of its shareholders, whether they be public or private. We, as Jewish people and for some millennia, never gave up, and so, of course, we will not do so here under the premise, and in the presumptive hope, that somewhere, someplace in our literature, there are allowable formulations that fit business situations of modern-day society. To be sure, and with some statistical reference points, this writer assumed going into this project that there had to be. After all, our literature, as vast and comprehensive as it is, must have produced some broad parameters affording us guidance for today's business ethical conflicts—it did for everything else.

With that premise as an accurate backdrop, we developed three representative microcosms of ethically challenged situations in business that covered the corporate organizational gamut of possible root causes stemming from both where the pressure points were located and to where they would have the greatest effect. These were, just for review, the internal project team, the somewhat related salesperson-client relationships, and finally, the top-tier management level where macro decisions potentially affecting the global firm could, and indeed, do occur. To make life interesting here, let's tear through them and, with the help of one reputable secondary source⁸ on Jewish ethics as applied to business, see just where we come out in our ability to tilt the windmills of Jewish strictures such that we, at once, adhere to our most basic principles, while at the same time defend both ourselves and the company itself from ethical assaults.

Flying in the face of Jewish principles against speaking ill of others is the need, as explicated earlier, to defend oneself essentially in the office—when on the project team, such that it is—and when one's efforts, input, and successful contributions are being minimized, demeaned, or simply ignored by those seeking to better themselves, financially more than anything else, at our expense. This happens all day long, all the time, virtually everywhere, and most especially when the financial remunerative stakes are highest. Concomitantly, however, someone once said that “academic politics are so ruthless because the stakes are so petty,” which gave credence to the inherently false notion that one need not be a multi-million-dollar-a-year Wall Street universe master to suffer the indignities inherent in the everyday working world. Whether one's job is at stake or whether

one's income is at risk, one of the stranger, and surely sadder, results is that people in those very tough spots implicitly turn their backs on religion, particularly Judaism in which societal and religious ethical principles are so entwined, because of an overwhelming but unstated opinion that stepping up to the plate in self-defense and, as we shall see later, in defense of the corporation itself, is mutually exclusive with obeying and adhering to the basic principles of faith. One key message of this article is simply that nothing can be further from the truth.

Consider this frontal assault, for example. Famed author Rabbi Joseph Telushkin, whose references will form the skeletal framework for this discussion states simply that “. . . in at least six circumstances, Jewish law permits, or even obligates us to lie, exaggerate, or otherwise mislead one another,”⁹ but these are for defensive purposes only it seems, and although rightly so, this does afford us some unusual, useful, and previously unrecognized ethical exemptions—and thankfully they do. “Lying in order to right a past wrong done to you”¹⁰ is permitted and “it would also seem to be permitted to deceive someone who has deceived you, in order to undo the damage.”¹¹ He continues further that, “You may lie to people who have defrauded or stolen from you, in order to get your property returned.”¹² For argument's sake, then, it would seem more than obvious to even the most partisan observer that there are, in fact, protective measures we can apply in any business setting that, when taken together, afford us more than enough tools to deal with whatever ethical violations that have been thrust our way. We surely need not be shrinking violets in the competitive world of business for the sake of religion, because, strangely, our Judaism would not condone that response, to think through the problem with a kind of philosophical confirming inverse logic.

By far, the toughest road to hoe is in the sales-related spectrum of activity largely because that realm of interaction has within it a wide set of behavioral norms with greatly varying opportunities for ethical disagreements. Nonetheless, if we take as a given our previous position—namely, that we should treat each customer as an unknowledgeable client to avoid the exploitation of persons who simply do not know better—things begin to rapidly fall into the right ethical space. Indeed, “The Talmud says one may alter the truth or, if necessary, lie to save a person from being exploited.”¹³ Presumably, executing this dictum may involve turning the tables on oneself and one's firm from a monetary standpoint, once in a while and

in some form, in order to restrict the sales of unnecessary products and/or services, but making things far more palatable in this scenario may be the combinatorial overarching Jewish concept of not fostering on your colleague what you would not like done to you. Now, as a conceptual whole, this process seems to work as it was intended to do so long ago.

Cruising up the business ethical food chain, we have finally arrived at a point where those sweeping company-wide decisions of probable momentous magnitude collide with ethical boundaries that seem to be in a constant state of managerial flux. It is not really that the ethical parameters have been altered; rather, it is that the human mind tends to minimize the risks inherent in any course of action. Thus, the more comprehensive the strategic change is, the greater the attendant risk becomes—but the risk does not expand arithmetically. In statistical reality, its consequences increase exponentially. In other words, we can fool ourselves into thinking that the worst case scenario will be far less dramatic than would otherwise be the case, especially if we have something to gain if the best case comes to pass—a virtual universally accurate assumption. With the high-level project team in place, we are seemingly insulated from singular blame, but this cocoon-like existence can come home to ultimately roost—big time, as we have all witnessed over recent years. Indeed, this is one of the most far-reaching business-related ethical problems that those with the responsibility face, and some have abrogated their ethical obligations to a startling degree. However, adopting a lower-risk profile here is both doable and ethically critical.

What do Jewish strictures on business ethical behavior teach us about how to handle these more global implicated situations? Actually, a great deal, much of which has gone largely unnoticed in Jewish ethical business literature. However, at least one writer of repute has pinned this down to a concise degree. Apparently, correcting the ethical behavior of colleagues, in a group situation or otherwise, is incumbent on us all and actually trumps the basic Jewish stricture on public retribution, of all things. Rooted in the commandment that “You shall rebuke, yes rebuke, your fellow, and not bear sin because of him” (Leviticus 19:17), which implies that, when observing others behaving badly, we should, and indeed cannot, remain silent.¹⁴ Surely, compromising the financial stability of an organization eminently qualifies as such a condition. Even more interesting and infinitely more prescriptive is the second part of the command-

ment that implies we share in the that person's misdeeds if we do not act to influence a change in behavior or decision-making.¹⁵ By way of useful explication, Rabbi Telushkin argues that this often overlooked commandment in Leviticus "is so significant that the Talmud teaches, 'Jerusalem was destroyed because its citizens didn't rebuke one another' (Shabbat 199b). Thus, no matter how elevated a society is—and Jerusalem has long been regarded as its premier city—if people don't effectively critique each other's ethical lapses, the society will deteriorate quickly."¹⁶

"The business of America is business."
—President Calvin Coolidge (1882–1933)

Touting the high business ethical standards demonstrated by Jews during the early years of the American Republic, Rev. Ezra Stiles, then President of Yale College, singled out Sephardic Jewish merchant Aaron Lopez (1735–1782) as one: "In honor and aptitude of commerce, there was never a trader in America equal to him. In business, he dealt with the highest degree of seriousness and clear-sightedness, showing always an affability in manner, a calm urbanity, and agreeable and sincere courtesy of manners."¹⁷ Indeed, representative of a long-standing tradition in American Jewish business history running back to the time when the first Jewish pilgrims—23 of them in all—set foot on the soil of New Amsterdam in 1654 (about 120 years before the first shots were fired signaling a war that would give birth to the most powerful business-driven capitalist society ever on this earth), Jewish businessmen of great social standing and impeccable ethical credentials actually, when one examines modern business systems in an historical perspective, set the standards for today's business context in Jewish terms. Consequently, we would be remiss in our responsibilities, both as historians and as analysts seeking prescriptive answers to the all-too-common ethical enigmas permeating business in our most modern society, if we did not pay at least some respect, however modest and in literary form, to those of our great Jewish American predecessors who, by dint of high character and fair business dealings, did so much for so many of us who came to the business and commerce tables long after them.

Lopez was surely not a Jew alone in such stature during those early years as many others of similar character and prodigious but fair-dealing

business acumen either preceded him or came soon in his wake. Isaac Moses in 1768, for instance and who later became Parnas of Congregation Shearith Israel—the first Jewish congregation in North America that was born from the small band of early settlers—was a founder of the New York Chamber of Commerce, while Sampson Simson, later a Parnas of the same synagogue, was instrumental in drafting the constitution of the Chamber of Commerce. Most notably, the New York Stock Exchange, America's premier institution for the global trading of the securities of companies whose operations transcend its shores, had among its founders three prominent persons of Jewish descent and impeccable ethical reputations—Benjamin Mendes Seixas, Ephraim Hart, and Alexander Zuntz. Crossing business lines into the founding of the Republic, Haym Salomon, also of Shearith Israel, was a key financier of the American Revolution, raising money for George Washington and later helping to keep the new government financially afloat after it was created. There are many others who had a major hand in the early years of America's business development, but the overall and significant input by Jews of celebratory business character into the incipient stages of a burgeoning free economy is a dynamic worthy of note: It set the stage for a melding of business, education, and scientific research leading to discoveries that now afford more than a modicum of protection for ourselves, our country, other countries that rely on us, and people of the Jewish faith.

Nowhere did early Jewish Americans of impeccable stature have more of a providential impact than in the founding of what would become Columbia University and that gave birth almost 200 years later to perhaps the most celebrated research department ever housed in one institution and one that would have the most profound impact on global history and, in reality, Jews the world over. The story, extracted here and stitched together in brief summary, begins with Rev. Gershom Mendes Seixas (1746–1816) of Congregation Shearith Israel who was one of the signatory incorporators of Kings College (later called Columbia College coinciding with the nation's independence from Great Britain), and who served on its Board of Trustees from 1784 through 1815. While almost equally worthy of a consolidated note is the fact that Sampson Simson, mentioned above, graduated from Columbia in 1800, delivering the commencement address in Hebrew and underscoring the generally most conspicuously unrecognized importance of that language to members of the Colonial establishment.

Interesting though these historical tidbits may be, the gargantuan impact that this university had on the fate of the world did not come until the storm clouds of World War II emerged, when literally tens of the world's most renown physicists, many of Jewish descent who, some having known each other in Europe's high-powered universities and research centers, fled the rising tide of anti-Semitism in their home countries and huddled together in the basement of Pupin Physics Laboratory at Columbia University, while some there at the time had already received degrees in physics from that university. Nevertheless so astonishingly pre-eminent was Columbia's Physics Department during the two decades or so, from the early 1930s to the 1950s, that we have to pause here just to digest a couple of intellectually overwhelming statistics. First and foremost, Columbia related physics faculty members accrued a galactic 13 Nobel prizes, and overall, the number of researchers hauling down Nobel prizes in physics who worked in the Department of Physics at Columbia at one time or another came to a mind-numbing total of 29. On top of those almost outrageous numerical facts, one has to consider that focusing on Nobel Prize recipients totally obscures the incalculable amount of ongoing ground-breaking research attendant to the success of all those individual efforts and the outlying research generally. Recounting all of these great physicists, especially the many who were of Jewish descent, is surely beyond the scope of article, but what most certainly is not, is the telling tale of the handful Jewish nuclear pioneers, with essentially pacifist scientific ethical values, who labored at Columbia and changed the face of the world as we know it to be today.

Although not as yet published, word leaked out to Columbia physicists—including the Jewish and future Nobel Prize winner, I.I. Rabi, working at Princeton University—that German chemists had concluded an experiment in “nuclear fission.” Returning to Columbia with the news, the physicists there conducted their own nuclear fission experiment, which was the first in the United States. The potential catastrophic possibility of what this force could engender was not lost on anyone, particularly if Germany found a way to harness its power before the United States. One Columbia research physicist, Leo Szilard—yet another Jewish refugee who held patents with both Einstein (Nobel, 1921) and Enrico Fermi of Columbia (Nobel, 1938) and is credited with many key physics-driven inventions of the twentieth century, but who never took

home a Nobel because many others went on to finish his work—sought to influence the President to pursue research on nuclear weapons. Underscoring his predilection for the preservation of human life, Szilard nonetheless advocated that, once developed, the full-scale destructive power of the bombs should be demonstrated to the enemy first because of their potential to be employed against civilian populations. Szilard was advised to seek the help of Alexander Sachs, himself a Columbia College graduate, member of Congregation Shearith Israel, chief of the economic research division of the National Recovery Administration, and unofficial advisor to President Franklin Delano Roosevelt, but that the aid of the world's most celebrated scientist of its time, the Jewish Albert Einstein, would be required. Einstein, also a life-long pacifist and opposed to the making of weapons, signed a letter in August 1939—drafted by Szilard and delivered by Sachs to the President—which referred to work done by Fermi and Szilard suggesting that the construction of bombs through a nuclear reaction could destroy vast areas. This apparently convinced President Roosevelt of the need to develop these weapons before Germany did. Eventually, the Manhattan Project was born to that end, the President appointed the Jewish physicist J. Robert Oppenheimer as its director of scientific research, and we all know how the story ended.

Lost to many observers of the nuclear research scene through to this day are the flagrantly positive scientific values and ethical underpinnings of the weapons story. Business as form of war is really where we begin to get into ethical trouble. Science here was pursued for the sake of scientific values and knowledge until it was found that we could also be staring death in the face—a reasonable way out of these specific ethical dilemmas according to every Jewish religious source that we know. No better tribute to these Jewish scientists of super-human talent could there be than that paid to Leo Szilard on the centenary of his birth in his native Hungary when he was hailed as “having an enduring passion for human life” and that he “personified the moral and ethical responsibilities of science,” especially having spent much of his time, in the wake of the war, attempting to diffuse, in metaphorical terms, the arms race itself.¹⁸

“And this is our motto: ‘In God is our trust.’”
—Francis Scott Key (1779–1843)

Concluding any piece of exposition does not call for, and indeed should not entail, recapitulation in the classical sense of the term for many reasons. High on the list is the simple fact that what has been said has, in fact, been so, and as a result, there is no presumptive need for reiteration. Far more importantly, however, the way in which any argument has been laid bare for any readership inevitably entails linearity, that is to say, each section forms a composite whole, and when strung together, where we started often has little to do with where we ended up, so that to use terms employed in the systems dynamics field of thinking, there is no room for the rich information afforded by feedback loops, multiple interconnections, and other elements related to the complexities inherent in dynamic systems and, by analogy, literary discourse. Consequently, it is incumbent upon authors to put meat on the skeletal bones of an article, for instance, and rather than summarize—which many writers do—present the threads of commonality within the piece that not only hold the facts together in linear form, but also help the reader embrace the underlying non-linear linkages in the ongoing sections, which could not be done previously because the sections were, to argue in a somewhat uncharacteristically obvious fashion, linearly ongoing. This is an important major point, so we will come at the simultaneously entwined themes of Jewish business ethics in a secular society, as herein described, in a somewhat oblique way in order to precipitate out its fully formed meaning.

As an inherent part of this methodology, we used a translational approach that entailed, as it normally does, attacking the problem from multiple angles or, more precisely, through a multi-disciplinary approach. As pure scientists in the burgeoning fields of nanotechnology, systems biology, computer science, electronics, and telecommunications—to name a few—will tell you, with little hesitation, that no complex problem was ever solved without the input of a diversely disciplined group. We even acknowledge this today in finance, economics, and its applications to the world's capital markets. There is very little argument here. Its ethical counterpart in business and as it relates to Judaism, was approached in a similar way, not through rabbinical eyes, but rather from the standpoint of those who were, to coin a phrase, in its multitude of trenches and were there for a long time. This does not insure against bias, any more than any

observer and/or participant can, but neither could rabbis and Jewish educators avoid their own innate predilections when studying whatever was served up on their research table. In this case at least, business ethics was seen from the perspective of those involved in business today or from a long term composite series of interactions in that medium of existence, and this attests, in some semi-scientific way, to its experimental validity. Although management by walking around is not the position advocated here, talking the talk while you are walking the walk certainly adds an unquantifiable measure of credibility.

On both the religious and business sides of the ethical equation, we adapted a reductionist paradigm that allowed for the minimizing of ethical configurations to a definable number that could be completely envisioned by the human mind. This took into account, on the religious side, what we believe to be the ethical foundations of our faith that are basically rooted in how we should treat each other, simply stated. On the business side, we reduced the number of ethically challenged situations to those that involved our co-workers, our clients, and our firms. This approach stands in rather stark contrast to couching studies in Jewish business ethics by rooting them in specific biblical or talmudic examples of enormous numbers and multiplicity of circumstances, all barely replicable today. The framework that we employed echoes that of business scholars of great repute, while at the same time, it takes into account what neuroscientists have long since known and economists—from a behavioral standpoint—have now proven to be true, namely that there is a limit on what our brains can process. Consequently, most of us are guided only by the most basic of religious strictures, and the ethical implications of that in business suggest that the application of religious, and in this case, Jewish ethical standards, are only useful when we can concretely define the business environments wherein they should apply.

Cutting to the Jewish ethical business chase, we found a curious pattern. Instead of what would normally be considered rational ethical conduct from which we, as Jewish people, should derive more than a measure of sustenance in today's widely acknowledged "dog-eat-dog" business world, what many have come to know as, and believe to be, the foundations of Jewish ethical behavior—business or otherwise—have built-in limitations of redress, to be rather pointed about it. This is when individuals stop believing, and it is here where religion falls off the proverbial

cliff. People in business look no further in the literature to find countervailing principles and practices that would allow for some defense of themselves, their clients, and the companies for which they work. The reality is, however, that Jewish ethical business practices—whether they be biblically derived or otherwise—actually work, and do so surprisingly well, in contemporary society, when and if given the explanatory chance. Conveyance is the key to understanding first and application second.

We are also not sitting idly and prescriptively by in this article. If we cannot figure out what to do in ethically challenged situations as Jewish people in business, then we undoubtedly have many more problems than initially thought. From the top down, showing how minimizing risk is in the interest of company shareholders is one major part of the prescriptive puzzle as it has uniformly always been, but it appears never more so than today when its effect on the foundations of some of the largest financial institutions in the world was, and continues to be to some extent, at stake. Client focus with an emphasis on acknowledging what the client does not know rather than what our own or our firm's ultimate interest is, in each instance and quite often, ends up to be not usually viewed as dichotomous as it should be. Finally, business project teams of all sorts and at all levels give rise to the kinds of corporate political power plays that often demand some type of defense, and we have found that we need not be defenseless while adhering to Jewish ethical principles of the most fundamental sort.

In threading the translational needle even further, we also found that the waves of Jewish immigrants landing on America's shores, beginning in the late nineteenth century, had predecessors with as deep roots in the country as any individuals who came before them, and they excelled in business and commerce, while still maintaining, and further attaining, the highest of ethical business standards. Through this contingent, which staked its claim in New Amsterdam in 1654, arose Congregation Shearith Israel—the only Jewish Congregation in New York until 1825—and that carried something of a mantle of responsibility in both disseminating information relating to the country's distinguished Jewish heritage and also setting standards of worship and fair business dealings for which so many of its early members were so widely known. Moreover, if the system of research silos has long since been a concept restricted to distant memories, then the convergence of financial and scientific meltdowns is surely in the forefront of our ethical concerns, and here is where Jewish genius

in the science of physics made sizable strides in balancing the greater of gains for the greater good, as discussed at length herein and for sound reasons. Rather than being interlopers onto American society, the reality is that Jewish Americans were inextricably entwined in its most early history, its development, and much later, in helping retain its standing in the world, both in terms of economic and military power—all of which has, and will continue to, go far in protecting us and our heritage. Much of this has stemmed from the ability to carry on ethical fair dealings in business, which has, by and large, kept the American capital system on a steady course, with the requisite and expected mid-course corrections for which human beings bear the ultimate responsibility.

One of the truly unusually accepted aspects of about roughly one-half of the year's Monday mornings in America—the location of the world's business heartbeat—is that one can quarterback with a clarity of focus unbeknownst to the Western world or to any world for that matter, and for many, the same activity also takes place during the remainder of the year with a continuing certainty. No ethical prescription is failsafe, to be sure, and requesting forgiveness, especially in business ethical transgressions, is as natural a part of Judaism as any other rite, and its pervasiveness is as sweeping as are the business-related underpinnings of virtually every society on earth today. However, the world's accumulated pantheon of logic dictates that we look for answers to ethical paradoxes in the totality of Jewish literature when they are not in easy reach in order to avoid giving sway to what may be most financially beneficial to us in the immediate term. At the same time and in many cases, we should seek Jewish prescriptive practices that prevent ourselves and our families from being vulnerable to what many would consider to be patterns of business conduct that are not as ethical as they could notably be. In any event and to conclude, perhaps the most appropriate coda to this article and one that helps to hammer home some of its more salient points is a line in the fourth verse of the American National Anthem—often sung, while standing and at the close of select dinners in Jewish homes, because the verse includes the words: “In God is our trust,”¹⁹ and indeed, it should ultimately be.

NOTES

1. Alfred D. Chandler, Jr., *Strategy and Structure: Chapters in the History of American Industrial Enterprise* (Boston: M.I.T. Press, 1962), 1–17.
2. Herbert Simon, *Administrative Behavior: A Study of Decision-Making Processes in Administrative Organizations* (New York: Macmillan, 1957), 198.
3. John D. Sterman, *Business Dynamics: Systems Thinking and Modeling for a Complex World* (New York: McGraw-Hill, 2000).
4. The reason that our behavioral reductionism may be mathematically well-founded is noted here in oppositely conjoined sentences. For example: “The possible ranges of behavior [for physical, biological, and social systems (inserted by author’s reference)] even for a simple system of three equations is enormous. . . . The most general three-dimensional differential equation system with quadratic right-hand sides has 30 parameters, so graphs or tables of its eigenvalues for Jacobian matrices at the fixed points is utterly impractical.”
From: Foster Morrison, *The Art of Modeling Dynamic Systems: Forecasting Chaos, Randomness, and Determinism* (Dover, 1991, 2008), 268.
5. For a broad discussion of these principles, see: Rabbi Hayim Halevy Donin, *To Be A Jew: A Guide to Jewish Observance in Contemporary Life* (Selected and Compiled from the Shulhan Arukh and Responsa Literature and Providing a Rational for the Laws and Traditions) (New York: Basic Books, 1972).
6. See: Michael E. Porter, *Competitive Strategy: Techniques for Analyzing Industries and Competitors* (New York: Simon & Schuster, 1980), and *Competitive Advantage: Creating and Sustaining Superior Performance* (New York: Simon and Schuster, 1985).
7. Alfred Rappaport, *Creating Shareholder Value: The New Standard for Business Performance* (New York: Free Press, 1986). (No known relation to the author of this article.)
8. Rabbi Joseph Telushkin, *A Code of Jewish Ethics: Volume 1—You Shall Be Holy* (New York: Bell Tower, 2006).
9. *Ibid.*, 423.
10. *Ibid.*
11. *Ibid.*, 435.
12. *Ibid.*
13. *Ibid.*, 434.
14. *Ibid.*, 380.
15. *Ibid.*
16. *Ibid.*
17. For a complete review of Jewish American history as seen through the eyes of the members of Congregation Shearith Israel, see the following remarkably well-done book from which some of the material in this section is drawn: Rabbi Marc D. Angel, PhD, *Remnant of Israel: A Portrait of America’s First Jewish Congregation—Shearith Israel* (New York: Riverside Book Company, Inc., 2004).
18. William Lanouette, quoted in *The New York Times*, March 20, 1998,

“Hungarian Fingerprints All Over the 20th Century,” from the *Budapest Journal*. See also: William Lanouette and Bela Silard, *Genius in the Shadows: A Biography of Leo Szilard: The Man Behind the Bomb* (New York: Charles Scribner’s Sons, 1992).

19. An acknowledgement is due here to the Neumarks: Debby and Mel, and Susan and Avery.

The opinions expressed herein do not necessarily represent those of any institution or individual, named or unnamed with which the author has been, is now, or will be affiliated, and these opinions can change over time. The information and examples used here are hypothetical, employed for illustrative purposes only, and do not represent the views, activities, or organizational arrangements of any particular firm, division, department, employee, or former or prospective one or individual. Any similarity discerned is a matter of coincidence.