Meorot

A Forum of Modern Orthodox Discourse

***Tishrei* 5771**

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Tishrei 5771

A Publication of
Yeshivat Chovevei Torah
Rabbinical School
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(formerly *The Edah Journal*)

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Graphic Design: Erica Weisberg

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Tishrei 5771

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Meorot
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Introduction to the *Tishrei* 5771 Edition: Whither the Orthodox Rabbinate?

Eugene Korn

Welcome to the *Tishrei* 5771 edition of *Meorot*. This year has been eventful for Orthodoxy in general and particularly for the Orthodox rabbinate. Stated simply, the institution of the rabbinate is in crisis. Challenges to the American and Israeli Orthodox rabbinate abound regarding its composition, its behavior, the domain of its authority, and its ability to serve *kelal yisrael*. Most of the articles in this edition analyze, reflect upon and offer solutions to some of these challenges.

The genesis of this crisis is the modern era itself, with its general undermining of authority and almost sacred emphasis on individual autonomy. In modern culture, all authority is suspect or at least on the defensive. The legitimacy of institutional authority is no longer a given, and constantly stands in need of justification before its constituents. In modern societies, unlike those of previous eras, authority is earned, not inherited or granted. Respect emerges from integrity and service; office, in and of itself, carries little weight.

This is painfully evident in Israel, where much of the rabbinic establishment still feels an obsolete sense of entitlement. This illusion encourages many Israeli rabbis to work oblivious to the needs of *am yisrael* and Israeli society—even of religious Israelis. The result is not hard to understand: the official rabbinate commands little respect. Even worse, Jews around the world increasingly view the Israeli rabbinate as serving only its own interests, or at most the narrow interests of *haredi* Israeli Jews. This comes at the expense of the Jewish people, for the rabbis seem to be compounding instead of resolving many highly publicized problems facing *kelal yisrael,* be they the issues of the treatment and status of women, *agunot*, *shmitah,* conversion or military service.

In America, too, rabbis face critical issues that will shape the future of our communities and Orthodoxy. After a year in which a number of Orthodox rabbis and leaders have been publicly accused and convicted of sexual abuse, financial crimes, *kashrut* deception and fraud against the government, the Orthodox rabbinate is now besieged by credibility and integrity problems. (At present two well-known American Orthodox rabbis are under investigation for sexual improprieties, while the religious Zionist community in Israel is still reeling from revelations of long standing sexual abuse by one of its most prominent and charismatic rabbinic leaders.) Hardly a month passed in 5770 without some deeply troubling scandal of Orthodox religious leaders making national news. To add salt to the wound, this comes to light when Orthodox rabbis seem to be adopting more and more stringencies in the realms of ritual behavior and gender separation. Indeed, if power corrupts and fosters exploitation, it matters little whether the power is held by secular or religious officials.

The American Orthodox rabbinate is also being today challenged on the grounds of its very identity as an exclusively male fraternity. In February 2010, Rabbi Avi Weiss ordained Sara Hurwitz, bestowing on her the title of "Rabbah." The event has led the Orthodox community to ask itself whether the absence of female rabbis is essential to Orthodoxy, required by *halakhah* or simply the reflection

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of the hierarchical gender mores of earlier Jewish culture and society. "Rabbah" set off a loud storm of emotional debate—some constructive, some purely rhetorical and some laced with the kind of intolerance to which *Hazal* ascribed the destruction of the Second Temple and the long continuing exile of our people.

The controversy produced both responsible and irresponsible statements. The leading rabbis of Agudath Israel declared that "these developments represent a radical and dangerous departure from Jewish tradition and the *mesoras hatorah*, and must be condemned in the strongest terms." Agudah spokesman Rabbi Avi Shafran explained that Agudah objects to women as rabbis because it is a violation of women's "*tsni'ut*" (modesty): "Roles that thrust a woman into a public venue" are unknown in Jewish communal life and are not legitimate in Orthodoxy. Yet "others such as counseling and offering wise advice are traditional and acceptable even in the *haredi* community."

Less temperate reactions were voiced by some rabbis in the Rabbinical Council of America. Some wanted to expel anyone who ordains or employs women as rabbis. One RCA officer blogged that the move to ordain women was "a throwback to pagan ideology," and a leading RCA *poseq* came close to branding women's ordination *"yehareg al ya'avor*"—a prohibition to be avoided even to the point of death. Of course there was no evidence or proof adduced for these extreme and wild claims, but their irrationality indicates the panic and deep personal threat that some males in the Orthodox community feel.

In the end the RCA displayed its wisdom and communal responsibility by concluding with a balanced resolution stating that it "cannot accept either the ordination of women or the recognition of women as members of the Orthodox rabbinate." Conspicuously absent from the statement was any claim of formal halakhic prohibition, any pledge that the RCA would *never* accept women rabbis, or any censure of women rabbis and those who would ordain them. Additionally, the RCA called for the "ever-broadening and ever-deepening wellspring" of Torah study and faithful observance among young women as they "rise to positions of influence and stature."

Logical arguments count most importantly for a vibrant Modern Orthodoxy true to its principles. For Agudath Israel or the *haredi* community, change—or even the specter of change—is sufficient to preclude an idea from being adopted. But Modern Orthodoxy is based upon a rational acceptance of change within acceptable halakhic and perhaps critical other limits. As R. Michael Broyde has astutely noted, it simply not enough for Modern Orthodox leaders to correctly observe that women rabbis would constitute "a radical change." After all, the proposal to begin Yeshiva University in the 1920's was a profound (radical?) change for yeshiva life, as is the practice women learning *gemara.* Modern Orthodox leaders must demonstrate why a given change is illegitimate within their understanding of Torah, *halakhah* and the Orthodox community. Absent such a cogent demonstration, such change would seem admissible.

The arguments surrounding women as rabbis and communal leaders fall logically into four categories: halakhic ("Are women rabbis and leaders forbidden by formal halakhic categories?"); communal ("Will the step toward women rabbis and communal leaders produce a deleterious irreversible split in Orthodoxy?"); national ("When effective Jewish leaders are in short supply today, is it wise to ignore the leadership talent of over half of the Jewish people?"); and moral ("Does denying women access to Orthodox leadership positions constitute unjust gender discrimination?" "Does it arbitrarily deny young women the opportunity to develop their God-given Torah talents?").

We hope that two feature entries in this edition, "On Women in Rabbinic Leadership Positions," by Rabbi Professor Daniel Sperber and "Non-

Halakhic Considerations of Women's Roles and Leadership in Orthodoxy," by Rabbi Nathaniel Helfgot, Dr. Erica Brown, Rabbi Dr. Gidon Rothstein and *Matra D'atra* Dena Najman contribute more light than heat to the issue, and help clarify the real issues surrounding the question of women rabbis in the Modern Orthodoxy of tomorrow.

In the most exhaustive English halakhic treatment of the issues to-date, Rabbi Sperber analyzes in detail the textual sources of the halakhic obstacle to a woman being a *poseq*, a communal leader or a rabbi: *Mishnah Niddah* 6:4 ("Whosoever is eligible to judge is eligible to bear witness.") and Maimonides' ruling in *Mishnah torah, Hilkhot melakhim* 1:5. He surveys the talmudic texts, its rabbinic commentaries and responsa literature, concluding as did Tosafot and Ran that a community may voluntary accept official rulings of women (as the Jewish people did regarding the biblical prophetess, Devorah) and that Maimonides' prohibition has no prior source in tradition, that it is seen by some *rishonim* as applying only to appointments of the Sanhedrin and that it has been rejected by *rishonim* and later decisors such as R. Uziel and Rabbi Moshe Feinstein. (R. Uziel's full analysis of the Maimonidean ruling appears in *The Edah Journal* 1:2.)

It is interesting to note that Maimonides' prohibition that figures so prominently in the debate around women rabbis logically applies as well to women's suffrage, yet it is ignored by Modern Orthodox *poseqim* regarding this issue. Moreover, many of Maimonides' rulings regarding women such as his prohibition on wives leaving their homes more than twice a month or their obligation to fear their husbands seem culturally determined and are also rejected by the Orthodox community today. Like R. Uziel regarding women's suffrage and leadership, R. Sperber also finds that while *tsni'ut* is a serious Jewish value to be preserved in our communities, it does not pose an obstacle to women functioning in leadership or rabbinic roles.

Meorot's associate editor, Rabbi Nathaniel Helfgot, views the entry of women into Torah study and communal leadership as blessings of our time, and sees the real issues for Orthodoxy outside the realm of formal *halakhah*. The important dilemmas for us are sociological and moral, and as such he raises a number of critical questions: If women in rabbinic and leadership positions are not clearly forbidden, do we not alienate many of our best young people by rejecting what is permitted? And do we not undermine rabbinic credibility when doing so, opening ourselves to charges of misogyny and self-interest in protecting rabbinic power?

Rabbi Helfgot deserves much credit for taking seriously the moral concerns to which so many opponents of religious roles for women are deaf. If halakhically permitted, how can we justify this gender discrimination and frustration of women's potential and growth? I would add that modern philosophy understands justice to be the absence of arbitrary in equalities. If so, on what basis is barring women from communal positions or the rabbinate not "arbitrary," similar to barring, say, Sephardic Jews or blue-eyed Jews? What is the moral capital of "the way things have always been"? At a time when prohibiting women from the privileges and benefits of all other aspects of modern life is widely considered unjustifiable, Modern Orthodox Jews need to think deeply about the morality of their own gender judgments and policies. If we wish to defend them rationally, we need to cogently demonstrate why we are not guilty of injustice.

Erica Brown offers sensitive literary and religious reflections on biblical models for female leadership, exemplified in the personalities of Devorah, Yael and Sisra's mother from the Book of Judges. They indicate that women sometimes did exercise communal and even military power in different modes among our people in the biblical era—ostensibly with the assent of the religious leaders of their times. And if our biblical ancestors were prepared to accept women leaders (even if only on occasion) should we not also? She asks the national question, believing that if we stifle more than half of the voices of Jewish people and eliminate them from potential leadership, we imperil the Jewish people's future. Moreover, she wonders if the intricate halakhic analysis so often

heard from rabbis (mostly to prohibit) are not in truth a distraction from the crisis of leadership that the Jewish people is currently experiencing.

Rabbi Gidon Rothstein is disturbed by the arguments in favor of women rabbis, as well as those who make those arguments. He raises the questions of who legitimately belongs in the Orthodox debate on this issue, and if they be only persons with public Orthodox *bona fides,* who so qualifies? Finally, what constitutes an authentic Orthodox argument (pro or con) in the debate? These considerations introduce important but potentially explosive factors, as the arguments can easily slip from *ad logos* to *ad hominem*—or worse, descend into the delegitimization and heresy hunting from which our community sometimes suffers. Deena Najman the *Matra D'Atra* of Kehilat Orach Eliezer in Manhattan relates her experiences as teacher, pastor and religious leader in her community. Once again, if a woman in a rabbinic role is not banned *apriori* by halakhic stricture, then the question is a prudential one, depending upon projected benefit and loss. And surely Ms. Najman's actual experience in this experiment should help us to evaluate the communal and personal impact of women religious leaders in Orthodox life and community.

Whether or not R. Weiss' ordination of Rabbah Sara Hurwitz was a boon or problem for Orthodoxy is now fiercely debated. Whatever the answer, R. Weiss has presented Modern Orthodox Jews with an opportunity to become more knowledgeable about the real issues at play, to separate them from rhetoric and bogus claims, to study the halakhic texts and opinions and to deepen our rational judgments about the future of Torah and our people. In the words of Immanuel Kant, he has "awakened us from our dogmatic slumber:" the unthinkable is now thinkable, the unspoken is now spoken. It is our responsibility to determine whether these thinkables and spokens are advances or setbacks for healthy Modern Orthodox life.

In "The Challenge of Halakhic Innovation," the scholar and prominent religious Zionist leader, Rabbi Benjamin Lau, discusses the recent changes in the Israeli rabbinate, such as its adoption of unprecedented stringencies, its acceptance of *haredi* ideology and values, its refusal to adopt *hiddush* in its decision making, its failure to understand modern women and their conditions, and its estrangement from the life and problems of the Israeli people. He argues passionately for rabbis and a rabbinate that can create a *halakhah* that embraces all aspects of Israeli life, that boldly works through the problems of modern Israelis, and that utilizes *hiddush* in the way that all great classical *poseqim* did. For him, this approach is not innovation, but the return of the Torah from exile and its restoration to its proper place of humanely serving Jews and Jewish life in all their aspects.

Psychiatrist and Dean of Tel Aviv Medical School, Rael Strous discusses the temptations toward sexual abuse that accompany rabbinic power and authority. Written after numerous rabbinic sex abuse scandals in the United States and Israel but prior to the aforementioned Israeli revelation, the article explains the psychological and practical necessities of firm boundaries in rabbinic practice and the psychological dimensions of rabbi-congregant/student relations, laying down rules for avoiding boundary violations. Fortunately some Orthodox organizations have formulated rules in this area, but the field is still young and much work needs to be done to confront the problem comprehensively.

The RCA has recently reopened a discussion to reconsider its previous acceptance of brain death. The alternative is insisting on permanent cessation of circulation and respiration as the halakhic definition of death. Rabbis Herschel Schachter and J. David Bleich advocate this latter definition as the correct halakhic standard. Rejection of brain death has enormous implications for saving lives, for it would preclude the permissibility of most organ transplantations. Dr. Noam Stadlan examines the definitions of cardiac death offered by these two rabbis, finding them anatomically imprecise, occasionally contradictory and entailing incoherent results when applied to modern medicine. He advances the thesis that "the brain is the home of the soul," arguing that a halakhic definition of life identifying the brain as the beneficiary of circulation and respiration would avoid some of the logical problems and *laqunae* of the old definition as well as be more consistent with modern medical advances such as artificial hearts and organ preservation.

In our regular feature, *The Daled Amot of Halakhah,* R. Moshe Kahn examines the halakhic considerations regarding postponing conception and child rearing for young couples. He notes the deep ambivalence felt by many of his students and other newly married couples who are committed to halakhic norms and yet also sense that they are not psychologically or financially ready to begin a family. He also asks a logically prior question, namely, whether couples should indeed ask a *poseq* or rabbi for a ruling on this momentous decision.

Acceptable standards for halakhic conversion has become a contentious issue in the past year, set off by the consideration of 350,000 *olim* (mostly from the former Soviet Union) now living in Israel who are not halakhically Jewish. Leaders of the national religious community realize that there is a need for this large population, which fights in the IDF for the survival of Israel and has committed its destiny to that of the Jewish State, to be assimilated into Israeli society. Many of these *olim* were converted by the Orthodox rabbis of the IDF or by R. Hayyim Druckman after completing extensive Jewish education in the Institute for Jewish Studies, established by the governmental Ne'eman Commission and headed by the Orthodox scholar, Prof. Benjamin Ish Shalom. These conversions are now questioned and most have been invalidated by *haredi* rabbis in the Chief Rabbinate. The crisis has spiraled into legal action before the Israeli Supreme Court and spawned a contentious new Knesset bill authored by MK David Rotem. The bill is now being fought by the Jewish Agency and most of the national religious community in Israel as well as heterodox Jews in America.

Amidst the debate of "Who will be a Jew" and what are acceptable standards for conversion, Professors Avi Sagi and Zvi Zohar have published their research on the halakhic tradition regarding conversion. It was translated into English recently and Prof. Marc B. Shapiro evaluates this book and its claims in his review essay.

I was delighted to read two recently published books, *Abraham's Journey,* edited from the lectures of Rav Joseph B. Soloveitchik, and *Future Tense* by UK Chief Rabbi Jonathan Sacks. My review essay on these volumes sets them in the context of contemporary Modern Orthodoxy, the role of *halakhah* in Orthodox life and thought, and place of ethics and universal values in Orthodox life and thought.

I trust you will enjoy the variety and depth of the articles in this edition of *Meorot,* and invite you to send your responses to the edition by emailing us at meorotjournal@yctorah.org.

All of us at *Meorot* wish you a *g'mar hatimah tovah.* May 5771 be a year of peace and blessing for all Israel and the world.

Bi-verakhah,

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On Women in Rabbinic Leadership Positions

Daniel Sperber

Biography: Rabbi Professor Daniel Sperber is President of the Ludwig and Erica Jesselson Institute for Advanced Torah Studies at Bar Ilan University and Rabbi of Congregation Menachem Zion in the Old City of Jerusalem. Professor Sperber was awarded the Israel Prize in 1992 for his seven volume work, *Minhagei Yisrael*. His previous contributions to The Edah Journal and Meorot include "Ecological Ethics" (*Tevet* 5762), "Congregational Dignity and Human Dignity: Women and Public Torah Reading" (*Elul* 5763), "Continued Discussion of *Agunah, Kiddushei Ta`ut* and Tears of the Oppressed" (*Tammuz* 5765) and "Friendly *Pesaq* and the Friendly *Poseq*" (*Sivan* 5766)

Abstract: This essay analyzes the halakhic issues regarding women assuming positions of communal leadership and being rabbis. It examines in detail Maimonides' halakhic ruling restricting communal appointments to adult Jewish males, citing pre-modern and modern halakhic decisors and agreeing with R. Moshe Feinstein (among others) that Maimonides' ruling was his own innovation is a "rejected ruling." Maimonides' prohibition of women in communal leadership is also not historically accurate. It concludes that while allowing women rabbis is an innovative step in the Orthodox community, there is no normative halakhic bar to women being ordained or functioning as Jewish communal leaders.

Meorot 8
Tishrei 5771
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On Women in Rabbinic Leadership Positions

Daniel Sperber

Introduction

There are those who argue that our whole halakhic system is skewed by overwhelming bias towards males: it is wholly "androcentric." As a consequence it should be completely deconstructed and then reconstructed in an egalitarian fashion given the contemporary status of women. I find this view unacceptable. I have always thought in terms of the normative tradition of classical *halakhah*, and believe that we have a sufficiently rich legal heritage to be able to confront the majority of challenges that modernity presents and find solutions within the parameters of classical halakhic thinking.[1] And even when it appears that we may have to reject hallowed precedent and tradition, a careful examination of the relevant sources will demonstrate that this is not necessarily the case. Rather we may circumvent and/or reinterpret so that the apparent precedential sources actually present no threat or contradiction to contemporary needs. I believe that all this may be done without straying beyond the parameters of the normative halakhic process. In this essay I shall try to demonstrate this by examining the question of the possibility of granting women elements of rabbinic status and communal authority.

This issue has recently become a *cause célèbre* and triggered an acute controversy when a woman was given a form of ordination and a title suggestive of rabbinic authority. I am referring, of course, to the highly publicized episode of Ms. Sara Hurwitz, who, after exhaustive examination by a number of rabbinic authorities, was granted the title of "Maharat"—a Hebrew acronym denoting a position of halakhic, spiritual and Torah leadership.[2] Shortly afterwards her title was changed to "Rabbah", which sparked an even more vehement and acrid response on the part of the Ultra-Orthodox Agudath Yisrael and the Moetzet Gedolei ha-Torah of America, and also the centrist Orthodox Rabbinic Council of America (RCA). Many contended that the RCA buckled under to the extreme right-wing pressure.

Be that as it may, the juggernaut of opposition forced a partial retraction from the title of "Rabbah", which in any case was probably politically ill-advised. But while the title seemed to be the main source of the controversy, the actual function was largely ignored. For there had already been women in similar functional positions, but under different titular definition, such as "intern", "educational director", "*Rosh Kehilah*", or "Scholar-in Residence" but on a

1. I stress this point because my view on this matter was completely misunderstood by the correspondent of the "Forward", Debra Nussbaum, in her report of March 16, 2010, misconstruing what I expressed at the JOFA conference on that date.

2. In point of fact a number of women had already been granted some sort of "*semikhah*" long before. Thus, Haviva Ner David was given an Orthodox ordination by Rabbi Arie Strikowsky. Rabbi Yonathan Chipman ordained Evelyn Goodman Tau, and three anonymous Orthodox rabbis (including Reb Shlomo Carlebach) granted *semikhah* to Mimi Feigelson, (Jerusalem Post Magazine, March 20, 2010, p. 41). And though I have no first-hand knowledge of the nature of those ordinations and on what level of knowledge they were based, they seem largely to have escaped the notice of would-be detractors.

more or less permanent basis. And so Sara Hurwitz continues, and will continue, in her authoritative function, while the title controversy rages but will eventually wane.

At the time when the issue of some sort of ordination for a woman was being raised, I was asked to write a responsum on the subject. I readily consented to do so, and did not really make any significant innovation, since the subject had been carefully discussed by a number of prominent authorities and scholars.[3] I was perhaps able to add some additional elements, and here give a somewhat expanded version of the argument that I put forward in my responsum. It was entitled, "Question as to whether a woman may give halakhic decisions," which is one of the important functions of a rabbi, though of course not the only one.

Women in Rabbinic Positions

Question: Can a woman answer halakhic questions, that is to say be a halakhic decisor?

Response: In *Mishnah Niddah* 6:4 it is said: "Whosoever is eligible to judge is eligible to bear witness." And in *Yerushalmi Yoma* 6:1 it is explicitly stated that since a woman may not bear witness she cannot judge. The *Tosafot* (BT *Niddah* 50a) asked: How then did Devorah the Prophetess serve as a judge? For in Judges 4:4-5 it is stated: "And Devorah, a prophetess, the wife of Lapidoth, she judged Israel at that time… and the children of Israel came up to her for judgment." One of their answers is that the Mishnah means to teach us only that he who is eligible to give witness may judge, i.e., that one who for some specific reason is ineligible to bear witness likewise may not judge; it does not mean to imply an overall prohibition against women acting as judges. This answer takes no account of the *Yerushalmi's* formulation.

The *Tosafot* (ibid.) offered an additional answer: "She [Devorah] did not herself give judgment, but taught [the judges] the laws; and the *Yerushalmi* declares women ineligible to judge." This answer teaches us that a woman may give halakhic rulings, for that is the real meaning of teaching *halakhah* to others.

Yet another solution to this apparent contradiction is found in Ritba on *Qiddushin* 35a (ed. A. Dinin, Jerusalem 1985, 373), and in Rashba to *Bava Qamma* 15a (ed. A. Lichtenstein, Jerusalem 1987, 21), namely that the statement in *Niddah* refers only to a man, meaning that only a man who is unfit to bear witness is unfit to give judgment. But women, though they are unfit to bear witness, may act as judges, as we learn from Devorah the prophetess.

We have a sufficiently rich legal heritage to confront the majority of challenges that modernity presents.

Quite a different reply is given by Ran on BT *Shevu`ot* 30a (13a in Rif's pagination), and Rashba on *Shevu`ot,* ibid. Concerning Devorah's position as a judge, they write in their second response:

….Or perhaps she did judge and did give rulings, because they accepted her, just as a person can accept one of his [close] relatives [as a judge].

3. To cite just a few examples: Pamela S. Nade, *Women Who Would be Rabbis: A History of Women's Ordination 1889-1985* (Boston, 1998); Simon Greenberg, ed., *The Ordination of Women as Rabbis: Studies and Responsa* (A Centennial Publication of the Jewish Theological Seminary of America—the Conservative approach, though Prof. Israel Francus' views are more Orthodox and largely negative) (New York, 1988). Avi Weinrot, *Feminism ve-yahadut* [Feminism and Judaism],(Israel, 2001), pp. 84-117; A. Frimer, "Women in Public Positions in the Modern Period," in *Afiqei yehudah*, ed. I. Warhaftig (Jerusalem, 2005), pp.330-354); Aliza Bazak "*Dayyanut nashim: nitu'ah mekorot ha-din u-behinatan be-dayyanut u-be-serarah*" ["Women Judges: An Analysis after Sources of the Law and its Examination in the Light of the Rulings on Judges and Officeholders throughout the Generations"] in *Lihyot ishah yehudiyah*, ed. T. Cohen and A. Lavi (Jerusalem, 2005,) pp. 88-99; H. Hirschensohn, *Malki ba-qodesh*, vol. 2, (Hoboken, 1941), pp. 182-92, and see note 5 below.

A close relative is legally disqualified to be a judge, and Ran is saying that one can take it upon oneself to accept the ruling of someone who is legally disqualified from serving as a judge (such as a close relative or a non-Jew) and "the children of Israel came up to her for judgment"—agreeing to accept her rulings—her rulings were binding upon them. Hence, if a woman is approached for a halakhic ruling, it presumes that the questioner will accept her reply as authoritative.

Furthermore, even according to those who do not follow the lines of interpretation I have cited above, there are numerous areas in which a woman is eligible to give testimony, such as *yibbum* and *halitsah* (*Shulhan arukh, Even ha-ezer*, *Seder haliszah* 21-24. Maimonides, *Mishneh torah*, *Hilkhot yibum ve-halitsah* 4:31); issues between a man and his wife (Maimonides, id., *Hilkhot ishut* 21:10), establishing that a captive woman had not been raped and is permitted to marry a *kohen* (Maimonides, id., *Hilkhot issurei bi'ah* 18:17); establishing ownership (BT *Bava Qamma* 104b); issues both monetary and otherwise (BT *Ketubbot* 85b, Responsa of Rivash, 182); everywhere the testimony of a single witness suffices (Maimonides, id., *Hilkhot edut* 5:3); *kashrut,* separating *hallah*, the Sabbath, and menstrual purity and impurity (Responsa *Tsits eli`ezer* vol. 4, 20); everything that a person can of his own accord correct (*Shulhan arukh*, *Even ha-ezer* 17:3, based on M. *Yevamot* 16:7), etc. It follows that in all these areas a woman is eligible not merely to give testimony, but also to give judgment.

According to all the above replies, the upshot of the passage in B.T. *Niddah* is that a woman may give halakhic rulings. This, indeed, is how one may understand a statement in *Sefer ha-hinukh* (158), where we read concerning the prohibition that one who is inebriated may not give judgment: "[This prohibition] prevents giving judgment in any place and at all times on the part of males *and of a wise woman who is suited to give ruling."* That is to say, "a wise woman who is suited to give rulings" may not do so if she is inebriated, but may do so if she is not.

And this is how Hida (R. Hayyim Yosef David Azulai) in his *Birkei yosef*, *Hoshen mishpat* 7:12, (and in *Pithei teshuvah* ibid. sec. 5) understood the situation:

> Namely that a woman is ineligible to judge; however, a wise woman may give rulings. So is it apparent from one of the Tosafot's answers, namely that Devorah taught them the laws. And see that this is so in *Sefer ha-hinukh*, for in sec. 83 he agreed that a woman is ineligible to judge, while in sec. 158, concerning drunkards he wrote: "and so a wise woman who is suited to give rulings …"

Ran says that one can take it upon oneself to accept the ruling of someone who is legally disqualified from serving as a judge.

Furthermore, Maimonides wrote of:

> the need to understand the forbidden and the permitted and the rest of the commandments… which constitute the great goodness the Lord bestowed [upon us] to the betterment of this world so that we may merit the World to Come, for these are subjects that all have to know. And they may be known to all—old and young, man *and woman* (my emphasis—D.S.) one with a broad heart and one with a narrow. (*Mishneh torah*, *Hilkhot yisdoei ha-torah*, chapter 4 *ad fin*)

We infer from here that an adult woman, with a broad heart, may well "understand what is forbidden and what is permitted." Indeed, continues Rambam, "the crown of Torah stands waiting for all, as it is said 'Moses commanded us a law, even the inheritance of the congregation of Jacob' (Deut. 33:4)—everyone who wishes may come and take." (Maimonides, id. 3:1)

On the basis of these sources several great authorities of recent times agreed that a wise woman, who took upon herself to study the

Torah in depth, and who could be said to be crowned with the crown of Torah, and who achieved a standard of learning such that she could give halakhic rulings, may indeed do so. Rav Yitzhak Isaac Herzog, *z"tl,* so ruled and Rav Bakshi Doron, (*Binyan Av*, (Jerusalem, 1982), 65:5, p. 287) wrote that women can be "of the great ones of the generation and serve as decisors, teaching Torah and halakhic rulings, for which the authority stems from personal abilities."

The source of authority for the ordained person is the competence he has demonstrated. Such competence is not gender limited

One should further take note of the fact that the institution of *semikhah* (ordination) was suspended, or even abolished, close to one thousand seven hundred years ago, and as a result the notion and character of ordination underwent a radical change. (See R. Moshe Isserles, in his *Darkei mosheh* to *Tur Yoreh Deah* 242:14, ed. *Mahon Yerushalayim*, pp. 599-600, 2xx; cf. his responsum no. 24, ed. A. Ziv, Jerusalem 1970, p. 147). From that time onwards the practice has been that a learned scholar, rich in experience and accepted by his congregation, after becoming acquainted with a candidate for ordination, and examining him in one way or another, gives him a "document of ordination" (*ketav hasmakhah)* that bears witness to his knowledge and competence in certain areas of *halakhah* (either *Orah hayyim* and *Yoreh de`ah—"Yoreh Yoreh"*, or *Hoshen mishpat* and *Even ha-ezer—"Yadin Yadin"*). This does not constitute a transfer of authority but rather an attestation to the candidate's abilities and suitability to respond to questions in specific areas of *halakhah*.

More recently, in certain communities, there have been established a series of written examinations, not necessarily individually tailored but formalized and covering a broad spectrum of halakhic issues. These are offered by institutions that prepare and vet them, and then give documents of ordination which are widely accepted by their communities. Such is the case of the Israeli Chief Rabbinate and Yeshiva University in New York, etc. But as stated above, this is a relatively modern phenomenon. Even up to the present day the traditional practice that has been in use for all generations since the abolishment of the original *semikhah* has been granting a testimony of competence by a rabbi who was ordained and accepted by the community as a decisor (*poseq, ba`al hora'ah*) to one whom he has personally examined in a detailed, systematic manner. The document specifies and defines the areas of competence. Thus the nature of such ordination and the ultimate source of authority for the ordained person is the level of competence he has demonstrated. Today, such competence is not gender limited, and may well be demonstrated and proven by women as well as men.

Indeed, there is now an accepted institution of women who are qualified to act as pleaders in rabbinic courts (*to`anot rabbaniyot*), and there are women advisors on halakhic issues concerning *niddah* etc. (*yo`atsot hilkhatiyot*). The latter are, in effect, offering halakhic rulings. The authority and recognition of such women is based solely on their proven competence.

As to the question of whether a woman can serve in position of communal authority, Maimonides' view (*Mishneh torah*, *Hilkhot melakhim* 1:5) is well known, forbidding women from having any position of authority.[4] However, later authorities stated that they know no source for this opinion (R. Moshe Feinstein, *Iggerot mosheh, Yoreh de`ah*, vol. 2, 44-45), and that it is "a rejected ruling "(R. Ben-Zion Meir Hai Uziel, *Mishpetei uziel*, vol. 3, *Hoshen mishpat* 6). In addition, Rav Uziel wrote (*Pisqei uziel* 43).[5]

> This ruling only refers to an appointment by the Sanhedrin. But when the appointment is by the consent of the community, where through a majority vote

> the public voices its opinions, the agreement and trust of the public in its appointees, who will be supervising their communal affairs—in such a case even Rambam would agree that there is no hint of a prohibition [i.e. for a woman to so serve].

In other words, since the appointment of the leader of a community, be it in a position of spiritual leadership (or administrative, financial and/or political) is dependent upon the congregation's agreement, or that of their elected representatives, the authority vested in such a leader stems from the community that has the halakhic right to vest its authority in its leaders.

This view may gain further support from the following discussion. The *Tosafot Yom Tov* on *Mishnah Avot* 1:10 raises the following question related to Maimonides' statement in the introduction to his *Commentary on the Mishnah* that Shemaya and Avtalion were converts and rose to be *Nasi* and *Av beit din*: "But surely we have learned (M *Sanhedrin* 4:2; M. *Horayot* 1:4) that converts cannot receive such appointments!" He replies that they themselves were not converts but perhaps born of a non-Jewish father and a Jewish mother (from "*qehal geirim*"). However, Hida (*Birkei yosef*, *Hoshen mishpat* 7:6; in the name of the *Kenesset ha-gedolah*) has a different solution. He asserts that "*qabbalah mehania*—acceptance has legal effect, as we have learned from Shemaya and Avtalion… In every case where the community accepts and is satisfied with an appointment, the appointee can judge even on matters of authority and enforcement (*be-milei de sevarah u-kefiyah*)."

There is, as it were, a contract of agreement that the congregation accept the rulings of its appointee, similar to that in a case of court arbitration, *borerut*). And when a great and accepted authority appoints an individual to such a position of leadership, the community assents to such appointment.

Later authorities stated that they know no source for this opinion and that it is "a rejected ruling."

Moreover, we see that R. Feinstein (*Iggerot mosheh*, *Yoreh de`ah*, vol. 4, 24) states that a woman is in no way prohibited from accepting a position of authority. Indeed, he permitted a woman to serve as a *kashrut* supervisor, even though it is a position of communal authority. (*Iggerot mosheh Yoreh de`ah* vol. 2, sect. 44)

Rav Herzog went even further[6] (ibid. p.111), stating that the women of our generation, especially those who have been put forward as candidates for parliament, have a very broad education and are successful in business, run charitable institutions, etc. Accordingly, they are surely fit to serve in leadership positions in the community, even as members of parliament. And, he argues, Maimonides would agree with this, for his remarks were made given the cultural state of women in his own time.

Rav Uziel forcefully rejected the suggestion that a woman serving in a central position of authority in a community, especially in the synagogue, would constitute a breach of

4. This matter requires much further elaboration, and therefore I have addressed it below. Most recently Prof. Abraham Grossman, in an article entitled "*Ishah u-mishpahah be-haguto shel R. Avraham ben ha-Rambam*." In *Dinei Yisrael* 26-27, 2009-2010, p.123, pointed to the ambivalent attitude of the Rambam to women. He refers us to *Hilkhot teshuvah* 10:1, where women's worship of God is categorized as of those of ignoramuses and children; *Iggeret ha-shemad* (*Iggerot ha-Rambam*, ed. Y. Shilat 1. Jerusalem 1987 p.30): "… even women lacking in brains…"; *Hilkhot avodat kohavim* 11:16: "those senseless idiots, and among them women and children, who lack understanding", (my translation—D. S.). On the other hand, Rambam, Grossman points out, was concerned for the rights of women. (See ibid.)

5. The full responsum of R. Uziel appears in English, translated by Zvi Zohar in *The Edah Journal* 1:2, found at http://www.edah.org/backend/coldfusion/search/document.cfm?title=Two Public Letters of Rav Abraham Ha-Kohen Kook %26—ed.

6. *Tehukah le-yisrael al-pi ha-torah*, vol. 1 (Jerusalem 1989).

modesty, or violate the prohibition regarding "the voice of a woman being unchaste":

> It is common sense that in any serious meeting and meaningful conversation there is no question of lack of modesty…. And sitting in the proximity [of women] when involved in communal affairs, which is work of holiness, does not lead to lightheartedness, (i.e. immodesty). For all Israel are holy people, and her women are holy, and are not to be suspect of breach of modesty and morality. [7]

Moreover, latter day authorities stated that wherever the awe of the *Shechinah* is present, we need not concern ourselves with the rule regarding "the voice of a woman being unchaste" (R. Zvi Elimelech of Dinov, *Benei yisaskhar*, [Zolkiev-Lvov, 1846] *Kislev-Tevet* 4, 123, in the name of Hida, *Rosh david* [Mantua, 1776], 56d, *Be-shalah*). This may also be deduced from the straightforward reading of the *beraita* in BT *Megillah* 23a and R. Ovadia Yosef, *Yehaveh da`at,* vol. 4, (Jerusalem, 1981), sect.15, *ad fin*, and his note on p. 78, as well as from Rav Herzog (*Tehukah le-yisrael al-pi ha-torah*, vol. 1, (Jerusalem 1989) p. 98), who writes that he sees no problem concerning matters of immodesty, for "surely women appear in our law courts…. and we have never heard that anyone has cast doubt on such behavior. And if we were to take such a stringent position, life would no longer be livable."

To summarize: From the time of our ancestral mothers—such as Sarah, Devorah the Prophetess, or Beruriah, the wife of R. Meir—there have been learned women who dealt in *halakhah* and gave halakhic rulings. See, for example, *Teshuvot maimoniyot* to *Mishneh torah*, *Hilkhot ma'akhalot asurot,* 5; *Tosafot* to B.T. *Shabbat* 111 b; *Raviyah, Evel* sect. 841, see Aptowitzer, vol. 3, p. 561; *Or zaru`a* vol. 2, 256; Responsa *R. Hayyim Or zarua* 101, 146, etc. Madame Bailah the wife of SMA, was famous and described as being learned by his son, R. Josef Jospe ha-Kohen in his introduction to the Derishah on *Tur Yoreh de'ah*, part 2. R.

From the time of our ancestral mothers, there have been learned women who dealt in halakhah and gave halakhic rulings.

Avraham Gombiner, (the Magen Avraham) disagreed with her on two of her *hiddushim*, but R. Yehezkel Landau wrote of her "that in my humble opinion the law is according to his mother…. And so would I rule like the wife of the Gaon the *Derishah*, who is a lady whose heart rises up in wisdom."[8]

There is even a tradition cited by R. David Conforte, (*Qoreh ha-dorot* 25b [Venice, 1746; Jerusalem, 2008], p. 93) that "a wise woman wrote" the anonymous *Kol bo*, a famous medieval book of *halakhah*, (though he probably rightly rejects this attribution).

In conclusion: From the above sources—

7. *Pisqei uziel* 44. See note 5.

8. Shlomo Ashkenazi, in his book *Ha-Ishahishah be-aspaqlariat ha-yahadut* [Woman as reflected in Judaism] vol.1 (Jerusalem, 1953), pp.115-130, lists over seventy learned Jewish women, several of whom had leadership positions (e.g. the daughter of Rabbenu Nissim of Kairuan, the wife of R. Yosef ha-Nagid (1031-1066), who after her husband's death led the community of Luciena (see Ashkenazi, ibid., p.118), and gave halakhic rulings (e.g. Bailah, the wife of R. Yehoshua Walk (1550-1614) (ibid. p.122), or the wife of R. Avraham of Falaise (ibid. p.119). See further M. Kayserling, *Jüdische Frauen* (Leipzig, 1879; Shlomo); Shelomoh Ashkenazi, *Nashim lamdaniyot: seqirah historit* [Learned women: A historical review] (Tel-Aviv, 1993); A. Neubauer and M. Steinschneider, *Zur Frauenliteratur*, ed. A.M. Habermann (Jerusalem, 1968). On Madame Bailah, see also *Entsiklopedia le-toledot gedolei yisrael*, ed. M. Margaliot, vol. 3 (Jerusalem 1943) col. 710.

Tosafot on *Niddah*, *Ran* on *Shevu`ot*, *Rashba* and *Ritba* on *Bava qamma*, *Sefer ha-hinukh*, *Hida* in *Birkei yosef*, and a number of latter-day authorities—it emerges that "a wise woman", a god-fearing one, who studied Torah intensively and *halakhah* systematically in depth and in breadth from truly learned scholars, and who was examined by them and/or by an experienced rabbi, and who gained practical experience in the areas of *halakhah* by being in constant contact with true authorities—*shimush*—is certainly worthy to be crowned with the crown of Torah, and rightly to be considered eligible to give halakhic responses and practical ruling, in those areas in which she was examined and found competent. And may the Lord guard over her that she make no error, and lead no one astray, but guide her congregation along the pathway of Torah and the fear of God.

(*Adar* 5769)

Women in Positions of Authority

I briefly alluded above to Maimonides' position on this issue, and here I would like to address it in further depth. It is well-known that Maimonides rules in *Hilkhot melakhim* 1:5, that to "all positions of authority in Israel (כל משימות בישראל) one appoints only men." And clearly a rabbinic position is one which carries with it considerable authority. The apparent source of this ruling is the biblical verse in Deut. 17:9. "You shall surely appoint over yourself a king", upon which *Sifrei* ad loc. adds, "a king and not a queen." Maimonides follows the ruling in *Sifrei*, expanding it to exclude a woman from having any position of authority, as we have just seen. R. Moshe Feinstein (in his *Iggerot Mosheh, Yoreh de`ah* 2, 45) writes, "I do not know, in my ignorance, of any source for his words, and we must assume that this was his personal opinion." R. Hayyim David Halevi (*Tehumim* 10, 1989, p. 121) also thought this

"I do not know of any source for his words, and we must assume that this was his personal opinion."

was Maimonides' personal opinion, but was troubled by the fact that Maimonides usually prefaces to a statement of his own view the words "it would appear to me" (ויראה לי). R. Halevi therefore finally concludes that Maimonides must have had a source which has been lost to us.

In point of fact, R. Uziel (*Piqkei uziel be-she'eilot ha-zeman* [Jerusalem, 1977], sect. 43, pp. 224 et seq.) claims to have found Maimonides' source in a homiletic exposition on Deut. 17:15, "You cannot place upon yourself a gentile [as King]."From here they learned that one appoints a man as *parnas* (community leader) over the community, but one does not appoint a woman as *parnas* over the community—a source discovered by R. Shlomo Aharon Wertheimer. Earlier, R. Yaakov Levinson, (*Shivyon ha-nashim mi-nequdat ha-halakhah* [New York, 1920], chapter 3, p. 18), pointed to the passage in *Midrash lekah tov* on *Shofetim* (p. 58), where the author adds: "A man and not a woman…this is a negative commandment, that one may not appoint a '*parnasah'* (female community leader) over the community."[9] One can also point to *Midrash* Psalms 22 (ed. Buber, p. 192), where it is stated: "Woe to the generation where women are its leaders." When discussing Maimonides' view, R. Uziel (ibid. p. 230) suggests the prohibition may have been based not on an inherent disqualification of women (פסול האשה), but on the affront to the dignity of the community (כבוד הציבור). The rationale is important, because when the appointment is not made by the Sanhedrin but is made by the community itself, the disqualification would nevertheless remain in force if it reflected something inherent in women. But if it is a matter of the "dignity of the community," an appointment made by the community would obviously not be seen as an affront. Hence, in such a case even Maimonides would agree to the legitimacy of

9. See also R. Yonah Dovrat, "*Behirat u-minui nashim le-tafqidei tsibbur* [Electing and appointing women to communal roles] in *Ha-qibbuts ha-halakhah*, (Shalavin, 1984), p. 299, who discusses Rambam's source, and R. Yisrael Rosen, *Nashim be-tafqidim tsibburiyim* [Women in communal roles] *Tehumim* 19, 1998 pp. 18-19; Avi Weinrot, ibid. p. 107 note 12, with additional references. He also refers us to a discussion between R. David Tzvi Hoffmann and Dr. Ritter regarding the status of Queen Shlomtzion, who Hoffmann argues received her royal authority by right of inheritance from her late husband Yannai. He further argues that there was no prohibition involved, merely halakhic policy. Ritter, for his part, held that there was no prohibition involved because the appointment was not by the people but by King Yannai. See *Ha-qibbuts ha-halakhah*, ibid pp. 286-290; Weingort, ibid. pp. 107-108 note 14. See further on this point the responsum of the *Noda bi-yehudah, Qamma, Hoshen mishpat* sect.1; *Minhat hinukh* 497:1; Y. Rosen, ibid. pp.20-21, for a further discussion of this point with additional bibliography.As an aside it is interesting to hear of the Moslem position on this issue. In "The Tale of Salim, the Youth of Khorasan", as related in Richard F. Burton's *Supplemental Nights* to the book of the *Thousand Nights and a Night*, vol.1, 1886. (facsimile ed. Denver 1900), p. 350, we read that Salma says: "But now Allah hath deigned reunite me with my brother, and it is no longer lawful to me that I be king and Sultan over the people, and I a woman; because there is no Sultanate for women, as when men are present". To which Burton adds a note (1):

> There is no Salic law among Moslems; but the *Rasm* or custom of Al-Islam, established by the succession of the four first Caliphs, to the prejudice of Ayishah and other masterful women would be a strong precedent against queenly rule. It is the reverse with the Hindus who accept a Ravi as willingly as Rajah, and who believe with Europeans that when kings reign women rule, and *vice versa*. To the vulgar Moslem feminine government appears impossible and I once was asked by an Afghan, "What would happen if the queen were in childbed?"

However, there were women leaders in the modern world. This is clearly pointed out by S.D. Goitein, in his magisterial *A Mediterranean Society* vol. 3 (Berkeley, Los Angeles, London, 1978), p. 357:

Al-Hākim's (966-1021) sister, Sayyidat al-Mulk ("The Mistress over the Kingdom"), was suspected of having engineered his murder and she ruled the country after his death for four years. The Sudanese mother of the caliph al-Mustansir (1036-1094), who originally had been a slave girl in the possession of the Jew Abū Sa'd al-Tustari (who later became her "vizier"), held power while her son was a minor. Al-Mustansir himself, on his deathbed, put the Imamate, the religious and temporal leadership of the empire, into the hands of his sister, who then swore allegiance to al-Musta'lī, the youngest and therefore, most amenable, of the seven sons of her dead brother. Al-Mu'izz, the most splendorous ruler of Zirid Tunisia (1016-1062), was brought up by his aunt Mallāl, also known in the Geniza papers as al-Sayyida, "The Mistress," or "The Ruler," who acted as regent until her death in October 1023, and there were other prominent women of the Zirid court. The role of women at the courts of eleventh-century Egypt and Tunisia was so conspicuous that Ibn 'Idhārī, the noted historian of the Muslim West, dedicates a special chapter to the topic. See ibid. pp. 506-507 notes 207-210. This subject is beyond my area of competence.

the appointment.[10] Indeed, this is R. Uziel's conclusion, namely that if a woman is elected by the public "even Rambam would agree that there is no hint of prohibition." (ibid. p. 232)

There are inscriptions from the Roman and Byzantine periods referring to women as archisynagogos or presbytera.

We have already mentioned that R. Moshe Feinstein did not accept Maimonides' ruling, citing that numerous early authorities disagreed with it.[11]

Furthermore, historically speaking we know there were women in leadership positions. We have already mentioned Devorah the prophetess and Queen Shlomtsion (above note 8), and there are a number of inscriptions from the Roman and Byzantine periods referring to women as *archisynagogos* or *presbytera*. We even know of a Rufina, who was a Jewish woman and an *archisynagogos*.[12] Are we to assume that all these historical precedents have no halakhic significance? Or rather, shall we follow the reasoning offered by several authorities that Maimonides' ruling is irrelevant to the contemporary situation, and that he himself would agree to the appointment of women elected by a democratic process to leadership positions, or alternatively appointed by a select committee with the agreement of and the satisfaction of the community.[13]

10. I have discussed this issue of "the dignity of the community" has been discussed by me in considerable detail in my essay entitled "Congregational Dignity and Human Dignity: Women and Public Torah Reading," in, *Women and Men in Communal Prayer: Halakhic Perspectives*, (Jersey City, 2010), pp. 27 et seq. We may point out that recently R. Aharon Lichtenstein expressed the view that there should be a greater stress on the well being of a *tsibbur* in several of his studies. See, e.g., "The Human and Social Factor in Halakha," Tradition 36/1, 2002, p.20; "*'Mah Enosh*?': Reflections on the Relation between Judaism and Humanism", *The Torah U-Maddah Journal*, 14, 2006-2007, pp. 30-43, etc.

11. e. g., *Hinuckh*, Rashi, Ran to *Qiddushin* 76b, *Tosafot* on *Sotah* 41b, etc.; *Iggerot mosheh*, *Yoreh de`ah*, part 2, sect. 45.

12. There is some debate in the professional literature as to whether women served in leadership positions in the synagogues of ancient times, but the preponderance of evidence is that they did. There are at least four inscriptions from the Roman and Byzantine period referring to women as *archisynagogos* or *presbytera*. See B.J. Brooten, *Women Leaders in the Ancient Synagogue: Inscriptional Evidence and Background* (Chico, Cal., 1982), 41-46; D. Noy, *Jewish Inscriptions in Western Europe;*, Vol.1 (Cambridge, 1993), 59, 62, 163. But there are others who question this interpretation of the documents. See D.D. Binder, *Into the Temple Courts: The Place of the Synagogues in the Second Temple Period* (Atlanta, 1997), 372-379 (with abundant bibliography, ibid., 372. n. 58). These issues were recently summarized by W. Marburg in *The Cambridge History of Judaism*, vol. 3 (Cambridge, 1999). 389-401, and by Lee I. Levine in his comprehensive book, *The Ancient Synagogue: The First Thousand Years* (New Haven-London, 2000), 482-483. Levine tends to accept Brooten's thesis that the majority, if not all, of the titles appearing in more than twenty inscriptions from outside of Palestine indeed indicate that women held official positions in the synagogue. On Rufina, see P. W. van der Horst, *Ancient Jewish Epigraphy: An Introductory Survey of a Millennium of Jewish Funerary and Epigraphy* (300 BCE=700 CE) (Kampen, 1996), 70, 105-109, who brings testimony concerning the offices of *archisynagogissa, prytanis, gymnasiarchos, agonothetes, mater synagogue, pateressa*, and *mater collegii*, all of which indicate that women served in positions of leadership both inside and outside the synagogue.

13. This is clearly the view of the *Yam shel shlomoh, Bava Qamma* 10, sect. 34, and the *Mishpetei shemu'el*, by R. Shemuel Kalai, Venice 1599-1560, sect. 92,: "that when the communities accepted them [as community leaders], even if they are relatives, it is patently simple… that there can be no claim [of disqualification] against them".."

Perhaps we should also take cognizance of the comment of the *Beit yitshaq* (Yoreh de`ah 257:5), citing the *Mordekhai* (to *Baba Batra* sect. 488)). He says that when a community wishes to appoint someone as its treasurer, he is duty-bound to acquiesce to their request. The *Mordekhai* refers us to *Yerushalmi Pe'ah* 8:1, when the appointment of treasurers, or collectors of charity, is discussed by R. Yitzhak and R. Haggai. This is also cited by the *Darkei mosheh, Yoreh de`ah* 256:2, and this ruling is accepted by the *Hokhmat adam* 147:29. A treasurer (*gabbai tsedaqah*) was a position of considerable authority, for he could bring much pressure upon those reluctant to pay their dues, forcing them to do so. And since we are discussing appointments made by a community, in effect the community is requesting the individual to assume a position of authority and leadership; hence, it would be halakhically problematic for the individual to decline such a request.

Conclusion

I have tried to demonstrate that a careful study of the relevant rabbinic sources leads us to the conclusion that there is no halakhic impediment to a woman's appointment to a leadership position. This, indeed, was the ruling of Supreme Court Judge Menahem Elon in the famous case of Lea Shakdiel, who was elected to the membership of a religious Municipal Committee (מועצה דתית), an appointment that elicited aggressive opposition on the part of the ultra-religious establishment. Nor should there be any halakhic problem in the case of a woman appointed to a position of halakhic authority in a congregation that welcomes her and accepts her leadership.[14]

In the above discussion I have not in any way deconstructed classical *halakhah*, nor have I ignored or rejected the views of dominant authorities. I have shown them to have referred to different situations from those with which we are dealing in present-day society, and believe that the most reverent of authorities could agree with my conclusions when being apprised of our contemporary situation. Admittedly, such moves are innovative and many of our leading authorities fear any kind of innovation. But we should follow the motto of the sainted R. Kook, whose credo was "הישן יתחדש והחדש יתקדש"— May the old be renewed, and the new be sanctified.

Postscript

Recently my friend and colleague Prof. Aryeh A. Frimer gave a lecture entitled "The View of Rav Joseph B. Soloveitchik, *zt"l*, on the Ordination of Women" (June 27, 2010). Rav Soloveitchik never discussed this issue openly, but Frimer found solid pieces of evidence that the Rav opposed women serving as *shul* rabbis, receiving *semikhah* and being presidents of synagogue boards. The Rav based himself primarily on Rambam's position that women could not have *serarah* (communal authority) and those positions granting such authority were, in the Rav's opinion, closed to women. I have discussed Rambam's position, and have reached a different conclusion. Paradoxically, the Rav did permit women to be *mashgihot kashrut* (*kashrut* supervisors), though I have argued they, too, have authority. He did not permit women slaughterers, but I have shown elsewhere that many communities did in fact appoint women slaughterers. (See *Minhagei yisrael* 4, Jerusalem 1995, pp. 9-12; vol. 6, Jerusalem 1998, pp. 260-263; vol.7, Jerusalem 2003, pp. 401-402; vol.. 8, Jerusalem 2007, p. 268).

"May the old be renewed, and the new be sanctified."

Prof. Frimer ends his balanced discussion with the following statement:

> This [the above] in no way contravenes the fact that a large cadre of leading *poseqim* have disagreed to varying extents with the Rav's sole reliance on the Rambam, his analysis of *serarah*, and his distinction between *serarah* and *miuni kahal*. Furthermore, many *poseqim* accept the efficacy of democratic elections (*kiblu aleihem*) as a means of circumventing *serarah* considerations in other communal leadership positions (such as *shul* presidency and elected political positions, and they may well feel the same about rabbinic positions…) As a result of all these considerations, it will not be a simple matter to come to a final ruling on the issue of women's ordination…

While I agree that the matter is not simple, I also think it needs to be confronted, and hence I penned the above deliberation.[15]

14. It is true that there may be congregational functions which she cannot carry out; see Francus' remarks referred to above note 3. They are not altogether convincing, however, and require further examination. In any case, they are few and far between and leave her sufficient areas of productive rabbinic activity.

I was also treated to Rabbi Nethaniel Helfgot's fine discussion on the subject.[16] He believes that "the major issue here is ultimately (not) halakhic. Rather it touches more on very emotional, sociological and political self-definitions regarding what have been perceived for 30-40 years as "bounding" issues between Orthodox and non-Orthodox movements. However, he further states that "taking into account the practical sociological communal realities, a move perceived as ordaining women at the moment is premature" I have the deepest respect for R. Helfgot and his reasoning, but I still venture to reply:

אם לא עכשיו, אימתי? —"If not now, when?"

16. Rabbi Helfgot's discussion can be found in this edition of Meorot—*ed.*

Meorot
A Forum of Modern Orthodox Discourse

Non-Halakhic Considerations of Women's Roles and Leadership in Orthodoxy

Nathaniel Helfgot, Erica Brown, Gidon Rothstein, Dina Najman

Biographies:

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Meorot 8
Tishrei 5771
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A Publication of
Yeshivat Chovevei Torah
Rabbinical School

On Women's Roles

Nathaniel Helfgot

The following is an edited version of Rabbi Nathaniel Helfgot's remarks at the panel, "Women's Leadership Roles" held at the Rabbinical Council of America's convention on Sunday, April 25, 2010. The other panel members were Rabbi Michael Broyde, Rabbi Gidon Rothstein and Dr. Deena Zimmerman. The panel discussion was conceived and moderated by R. Shmuel Hain.

I approach this topic from the following perspective. Women's expanded role is a blessed event in Judaism and in our life-time. Theologically, it is part of the process of God acting in history in the spirit of Rav Abraham Ha-Kohen Kook's perspective on how various movements in history unfold and contribute to the world and its ultimate goals. Many developments bring forth positive ideas and elements even as they present us with tremendous challenges and negative elements as well.

In addition I adhere fully to the Rav Soloveitchik's, *zt"l,* famous 14th *Ani-ma'amin* ("I believe") about Torah Judaism being capable of existing in every society and context without having to retreat into a "sect" or something that exists only in the social realities of the ghetto, closed off from the world.

The discussions we are having here are about the proper role of qualified and talented women in fulfilling various clergy-like functions (as they are already doing in a handful of RCA synagogues in various capacities, whatever title they are given). These women are or will be assuming these roles in areas of pastoral counseling, teaching of Torah, responding to halakhic queries, giving of *divrei torah* and *derashot* in various capacities and in some instances engaging in coordinating and directing life-cycle events while remaining faithful to those limits that *halakhah* sets, e.g. speaking under the *huppah*, reading the *ketubah*, arranging all the technical matters of the *siddur qiddushin* while at the same time recognizing that they may not recite *birkhot eirusin* or *birkhot ha-nissu'im.*)

In our ranks there are minimalists and maximalists on the propriety of these roles and actions. Most of the people who have discussed this issue in print or in e-mails have as a general rule tended not to raise questions about technical halakhic categories, but other more amorphous issues of meta-*halakhah*, tradition, sociology, tactics, etc.

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My general inclination in these matters is on the side of the maximalists, i.e. in favor of expanding the opportunities for and encouraging talented and qualified women to be able to fulfill their desire to serve the Jewish community and Torah. I believe so for the following five reasons:

1. We often speak at conferences and write in monographs about the significant personnel crisis in recruiting good people, especially outside of the New York City area, to enter the field of Jewish education, the rabbinate, Jewish communal work and the like. To close off possibilities that do not violate halakhic parameters, for more amorphous reasons, is to shoot ourselves in the foot. There are so many talented young women coming up the ranks that we cannot simply ignore this talent pool. At least some of them can contribute mightily to *ahavat ha-Shem* and *harbatsat torah* and serve as role models for our young women and girls and boys.

2. The entry of more women into the various fields of *avodat ha-qodesh* can bring about positive expansion and help in dealing with various parts of our community toward which we are not always as sensitive. Having women more involved may help bring to the fore in our congregational and halakhic discussions issues that we might not have been sensitive to before. A useful analogy here may be to compare our situation to the field of medicine and the impact that the entry of women into the field has had. Before women were involved in the practice of medicine in large numbers, many medical studies simply ignored areas of disease research that women were particularly affected by or did not include women in the sample when testing new medications, etc.

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They were simply not part of the conversation; issues and important data were simply not brought to the fore. In a similar vein, but closer to home, many of us are active supporters of programs like Kollel Eretz Hemdah in Israel that attempt to train *dayyanim* [rabbinical judges] who come from a national religious background. Because of their upbringing, training and world-views, *dayyanim* who have served in the Israeli army and elsewhere have been involved in general Israeli society are likely to have more positive interactions with the general Israeli public. They appreciate their perspectives better than will the *dayya*n trained in *haredi* institutions, who comes from a totally different world. Having women involved in some capacity in a congregational staff can have similar meritorious effects.

3. If indeed we believe that the issues surrounding greater involvement of women in clergy-like roles and functions are not really about formal halakhic limitations, then we run some serious risks in limiting access. Rav Aharon Soloveitchik, *zt"l*, pointed this out on his *pesaq* permitting women to recite *Qaddish*. If halakhically permitted opportunities are nevertheless foreclosed, we run the risk of losing to other endeavors many talented women who could contribute much to the community. Some might even become so alienated as to abandon Orthodoxy altogether.

4. If one maintains fundamentally that inclusion of talented women in various roles in the synagogue is not really prohibited by formal *halakhah,* but stems from more amorphous categories of *minhag* [custom] or *hashqafah* [philosophy] or simply from discomfort with the new, it is necessary to confront seriously the competing values at stake.

A strongly conservative stance on these issues runs the risk of ignoring primary values of Torah and halakhah, such as human dignity (*kevod ha-beriyot*), all persons created in God's image (*tselem Eloqim*), "the Torah's ways are ways of pleasantness" (*derakheha darkei no'am*) doing the right and the just (*ve-asitah ha-yashar ve-hatov)* and general moral principles of fairness and justice. In addition, one must take into account other less central, but nonetheless important values such as furthering the spiritual wellbeing of women ("*la-asot nahat ruah le-nashim*") that rabbinic scholars such as Rav Lichtenstein and Rav Sperber have cited in various fora.

If we truly believe (as many do) that the issues here are not explicitly halakhic, then we must look in the mirror and ask ourselves these hard questions about justice, about ethics and about what is the right thing to do. As Rav Lichtenstein has so eloquently written (in an essay in Hebrew) on the sources of ethics:

> "The parameters of ethics and morality and its truths have an important role to play in understanding *halakhah* and defining its boundaries. Of course, a Jew

must be ready to answer the call "I am here" if the command "to offer him up" is thrust upon him. However, prior to unsheathing the sword, he is permitted, and even obligated to clarify, to the best of his ability, if indeed this is what actually has been commanded. Is the command so clear-cut and is the collision of values indeed so frontal and unavoidable. To the extent that there is a need and room for halakhic exegesis and this must be clarified, *a sensitive and insightful conscience* (my emphasis—N.H.) is one of the factors that shape the decision making process. Just as Maimonides in his day, was consciously assisted by a particular metaphysical approach to the world (i.e. Aristotelian thought) in order to plumb the depths of the meaning of Biblical verses, so too one can make use of an ethical perspective in order to understand the content of *halakhah* and to outline its parameters. Clearly this process requires extreme care and responsibility. It must be assured that-and this rooted in deep connection to authentic Torah and religious piety-one is attempting to understand the *halakhah* and not God forbid to distort it."[1]

If the ethical and moral dimension must be part of the deliberation when addressing questions of pure *halakhah*, how much more must they be included in considering areas more related to *hashqafah* and policy!

5. There is a grave danger that excessive conservatism here may impair *kevod ha-Torah* [the dignity of Torah] in the eyes of our own laity and the broader community. In many of the discussions over the years on "women's issues" some rabbis and writers who viewed expanding women's roles with a jaundiced eye have often raised questions about motivations and whether the people favoring change were genuinely moved by piety. In recent years I believe this phenomenon has died down. R. Lichtenstein noted a few years ago that he never felt comfortable with those attacks on people and women who pushed for innovations because "what is good for the goose is also good for the gander." It very easily opens one up to charges about one's own motivations. Continued rejection of expanded roles for women in the synagogue context without real halakhic grounds can unfortunately lead people to conclusions—that one already hears already in the Modern-

Rejecting expanded roles for women without real halakhic grounds lead to conclusions that we are concerned with power and misogyny.

Orthodox "street"—about rabbis who have discomfort with opening their "guild" to new members, that we are concerned with power, misogyny, and the like. Let me be clear here, I am emphatically not saying that this is the motivation for those who are more conservative, but one opens oneself and institutional Orthodoxy to that kind of attack. This potential, is, I think is very detrimental to the future of Torah and religious Jewish life and is a real and present danger.

Rav Ovadyah Yosef wrote in his responsum on *bat mitsvah* ceremonies (*Yabi`a omer* 6:29)when discussing those opposed to those ceremonies on the grounds that they would give support to Reform and anti-Torah forces by confirming their heterodox practices, it is just the opposite that is true:

> But in truth, preventing girls from celebrating *bat mitzvah* ceremonies strengthens the hand of the sinners in complaining against the sages of Israel and charging that they oppress the daughters of Israel, and discriminate between boys and girls.

1. "*Halakhah ve-halakhim,*" in *Arakhim be-mivhan milhamah* (Jerusalem, 1986) pp. 13-24.

"Into the Hands of a Woman": Three Approaches to Women's Leadership

Erica Brown

When it comes to the treatment of women's issues in Orthodoxy, controversy abounds. The heated debates about women and prayer, study, dress and ritual observance often mask genuine confusion about how to integrate societal norms and expectations within traditional halakhic boundaries and conventions. Are we moving too quickly or too slowly? Have we protected and nurtured the dignity of Jewish law on a particular issue? Have we protected and nurtured the dignity of women on a particular halakhic issue? We find the voice of Elijah protesting, "How long will you straddle two fences?" The straddling posture is uncomfortable and ultimately not functional, since with feet on either fence there are no feet on the ground to act and advance.

This discomfort is perhaps nowhere more apparent than in discussions of Orthodoxy and women's leadership. Many Orthodox women who are leaders in their respective professions are flummoxed by angry synagogue board discussions as to whether or not they are eligible to be presidents of their congregations, to cite only one example of current debate. Some in this controversy are stymied by the prohibition of "*serarah,*" an official leadership role, allowing three words of Maimonides to prevent women from assuming any significant roles of leadership within today's Jewish community. Others try through the use of elaborate word-plays and definitions to understand not only what the word *"serarah"* means, but also what the position of leadership in question entails and if it thereby constitutes a clash of values. This includes discussions of whether the position is appointed or elected, how much decision-making the position involves, and who is being led. The nuances and mental gymnastics of this kind of analysis—an earnest struggle to be sure, but one that can seem almost humorous at times. One senses that the forest is being lost for the trees because the leadership of the Jewish community—and particularly the Orthodox community—suffers from the lack of strong, inspiring voices. To eliminate over half of those voices in a sweep only imperils the entire community more. Are not these intricate analyses actually a terrific distraction from thinking about the leadership of our communities? After all, when we think about present national leaders of the Modern Orthodox movement alive today, how many names really come to mind?

Are not these intricate analyses actually a distraction from thinking about the leadership of our communities?

And then, there is the "just do it" camp of women and their male and female supporters. They show rather than tell why women's leadership in the Jewish community is critical. It is not that this camp is insensitive to halakhic issues; quite the opposite is true. Yet many recognize that time is not on our side and that what we have to lose in terms of institutional change and innovation, role modeling, and competency cannot wait for all the debate to quell.

A Look Back, A Leap Forward

The three positions just outlined are not new. They resonate with far more ancient tremors. We will look back in order to move ahead by visiting two chapters in the Bible that can elucidate this range of approaches. The Torah is filled with colorful characters and, naturally, women are among them. There is no one portrait of a woman held up as a historic model for others to follow or to avoid, but, as with male heroes and scoundrels in the Bible, there is a great deal of latitude in the presentation of action and personality.

One book, in particular, offers a range of female leaders and minor characters for our investigation that may shed light on gender perceptions, particularly when it comes to leadership: the Book of Judges. By examining three women individually, we can create three pictures of female roles and their relevance for the issue of female leadership in the Jewish community today. To begin, it is best to study the biblical texts themselves and allow the three women to jump off the ancient page.

The Torah introduces Deborah

as a prophetess and leader.

In the first text, we turn to Deborah, who the Torah introduces as a prophetess and leader. We are told that "the Israelites would come to her for decisions" (Judges 4:5).[2] She is the chief decision-maker at a time of political and military upheaval that generally characterizes the period of the Judges. In the hope of ameliorating the Israelites' oppressive situation, Deborah approaches Barak, ostensibly the commander of the army (and her husband according to rabbinic thought[3]) and gives him the task of going to war against King Jabin of Canaan who reigned in Hazor. The king's army was led by Sisera who, according to the text, had oppressed the Israelites ruthlessly for twenty years and had access to 900 chariots. Deborah even gives Barak the skeleton of a strategic plan for victory, but he will only go to battle on one condition, namely that she goes with him. Deborah's response is telling:

> "Very well, I will go with you," she answered. "However, there will be no glory for you in the course you are taking, for then the Lord will deliver Sisera into the hands of a woman." So Deborah went with Barak to Kadesh. (Judges 4:9)

Deborah agrees, but at the same time uses this opportunity to castigate Barak for his lack of independence and courage. So unusual is it that a warrior enlists a woman to run the war that people will talk and say that the battle has been won by a woman. Barak offers no reply. What can he possibly say? Deborah has spoken the truth of her day. She merely accompanies Barak, and we assume that Barak was willing to withstand the possible belittling for the sake of security and victory. The military plan that Deborah envisions is successful: "The Lord threw Sisera and all his chariots and army into a panic" (Judges 4:15), and the victory is in the hands of the Israelites.

Only one chapter later, Deborah's role is commemorated in the Song of Deborah, yet she is called a mother of Israel rather than a military strategist or a commander.[4] Curiously, we do not see any maternal qualities in her actions in this swath of text. Nevertheless, she is credited with bringing deliverance to the Israelites: "Deliverance ceased, ceased in Israel, till you arose, O Deborah, arose, O mother in Israel!" (Judges 5:7) Barak is mentioned in the song but not lauded.

It appears that Deborah's initial observation was correct. The war was indeed won at the hands of a woman, but not the woman the reader was led to believe. It was not Deborah who was the military heroine of Judges 4 but, surprisingly, Yael**,** the wife of Heber the Kenite, a biblical unknown until this moment.

2. All Bible translations are from the *JPS Hebrew English Tanakh*, second edition (Philadelphia: Jewish Publication Society, 2003).
3. BT *Megillah* 14a.
4. See BT *Pesaḥim* 66b for a negative, non-literal reading of this statement.

Unlike Deborah who created the overall military strategy or at least reported it in the name of God, Yael was on the ground in an unusual one-on-one combat zone, her tent. This location is so significant to the battle that later, in Deborah's song, Yael will be praised through it: "Most blessed of women be Jael, wife of Heber the Kenite. Most blessed of women in tents." (Judges 5:24)

Tales of a Tent Peg

The tent is traditionally the domain of biblical women from the time of Sarah onward. The tent represents the place of a woman's power but also, the place of a woman's isolation. Sarah is in the tent when three visitors give Abraham the news of her upcoming pregnancy. When the visitors ask where Sarah is, Abraham replies "There, in the tent" (Genesis 18:9), but makes no attempt to fetch her and give her the news that will change her body and her life forever. Rather, Sarah eavesdrops from the tent to find out what they are saying: "Sarah was listening at the entrance of the tent, which was behind him" (Genesis 18:10). The location is yet another way for the Torah to tell us that Sarah was not invited into this intimate discussion about her future. She laughs to herself that what she hears is biologically impossible and then, in an astonishing interaction, God condemns her for her disbelief, but to Abraham. Even in chastisement, she is not spoken to directly. God gets the last word in the narrative: "You did laugh." (Genesis 18:15).

It was not Deborah who was the military heroine of Judges 4, but Yael

In contrast, Yael uses the safety and intimacy of the tent to present Sisera with an ironic refuge. He will turn into her tent gladly and with relief for the protection it affords not realizing that it is an invitation to his death. Not only is it the place that is least safe for him, Sisera will be lulled into the illusion of protection by acts of female nurturing associated with women and mothers. In the victory song of Judges 5, it is Deborah who is chief warrior and lauded as mother, but in the actual story it is Yael, who first acts like a mother to Sisera and then, when the ruse has been compelling enough, turns into a vicious warrior in the sanctuary of her tent:

> Sisera, meanwhile, had fled on foot to the tent of Jael, wife of Heber the Kenite; for there was friendship between King Jabin of Hazor and the family of Heber the Kenite. Jael came out to greet Sisera and said to him, "Come in, my lord, come in here, do not be afraid." So he entered her tent and she covered him with a blanket. He said to her, "Please let me have some water for I am thirsty." She opened a skin of milk and gave him some to drink; and she covered him again. He said to her, "Stand at the entrance of the tent. If anybody comes and asks you if there is anybody here say 'No.' Then Jael wife of Heber took a tent pin and grasped the mallet. When he was fast asleep from exhaustion, she approached him stealthily and drove the pin through his temple till it went down to the ground. Thus he died. Now Barak appeared in pursuit of Sisera. Jael went out to greet him and said, "Come, I will show you the man you are looking for." He went inside with her, and there Sisera was lying dead, with the pin in his temple. (Judges 4:17-22)

The motherly Yael tells Sisera to come in. Do not be afraid. She covers him in a blanket, and when he asks for water she slakes his thirst with the beverage of mothers, a skin of milk. And again, she covers him. Sisera, the ruthless fighter, becomes an infant again, tucked in by a woman and saved from the distress of the battlefield.

But Yael has not finished with the wonders of her tent. She grabs a tent peg, the item used to stabilize and ground this structure of privacy, and while Sisera is asleep, she mauls him by

driving the peg right through his temple and into the ground. The description is gruesome and wrenching, all the more so because we did not expect it. If anyone appears ruthless in this text it is not the warrior Sisera, who ran from the war and betrayed his own soldiers and his reputation for bravery to seek survival for himself. The ruthless one is Yael.

Yael then presents the scene in all its bloody details to Barak. "Here is the man you are looking for," as if to say I found him and did your job for you. In Deborah's song, Yael's violence is not questioned. It is praised and exaggerated: "She struck Sisera, crushed his head, smashed and pierced his temple. At her feet he sank, lay still; where he sank, there he lay—destroyed." (Judges 5:26-27)

In a marvelous etching of the scene, the French engraver Gustav Dore shows a triumphant Yael holding up the side of the tent for Barak's inspection. The drapery of her tunic mimics the fold of the tent, suggesting that she and the tent are mysteriously intertwined. Sisera lies still at Yael's feet, covered in an armor that did not protect him. His unused shield rests on a tent wall, capturing the etching's light, highlighting the irony that he let down his guard at the wrong moment. The artist shows a flimsy blanket draped across his writhing middle, the remnant of Yael's supposed care. Yael, an unknown woman with no title other than wife—she is neither the prophetess, nor the warrior, nor the mother, nor the decision-maker associated with Deborah's name—steals the limelight from both Barak *and* Deborah. It is she who best fulfills the descriptions offered of Deborah, forcing the reader to question the role of titles and the expectations they carry.

A Window on the World

There is one more woman in these chapters who requires our attention. At the end of the song, we find an unusual appearance of another woman, a character so obscure that we do not meet her in the narrative but only in the song: it is Sisera's mother, who offers another window into the life of women of the period by looking out the window. In contrast to Deborah, the mother of all of Israel, Sisera's mother is waiting by the window for her son to return from battle:

> Through the window peered Sisera's mother, behind the lattice she whined. "Why is his chariot so long in coming? Why so late the clatter of his wheels?" The wisest of her ladies give answer; she, too, replies to herself: "They must be dividing the spoils they have found: a damsel or two for each man, spoil of dyed cloths for Sisera, spoil of embroidered cloths, a couple of embroidered cloths round every neck as a spoil." (Judges 5:28-30)

Her appearance here is curious. Why does the text offer us this unexpected view of an enemy's mother? What could we possibly learn from this interior perspective?

An unknown woman with no title other than 'wife' steals the limelight from both Barak and Deborah.

The first line of this postscript to battle pulls at our heart strings. Even enemies have mothers who sit anxiously by windows, wondering at the fate of their sons in battle. The text, through its use of mundane details, places us at the center of this tension. The Torah beckons us to wait with her, to look out the window with her and try to hear the clatter of chariot wheels with her, unfortunately knowing what she does not know as she sits in anticipation. The chariot that communicated unstoppable force in Barak's earlier worries is here, at the story's end, its own source of anxiety. Just as our compassion for the other side grows does the text surprise us yet again.

The wisest of this mother's compatriots tells her not to worry. Sisera is taking his time because he is exploiting women, taking a damsel or two for himself and every man. A woman is assuring another woman that her son is fine by pointing out the way in which women are used and abused during wartime. Shamelessly, she suggests, and Sisera's mother absorbs this into her own understating of the situation, that Sisera is busying himself with his sexual needs. Strangely, embroidered cloths are mentioned no less than three times in this short passage as an additional consolation prize, tugging on the women's self-interest in what they have to gain through battle. Sisera's unnamed mother's psychic energy is expended on worry but will be rewarded with fine, embroidered cloths and possibly a few female captives of war to service her son's desires.

Three Models of Leadership

These chapters beg us to contrast not only the specific women depicted but also the characterization of women generally. We find Deborah under a palm tree, Yael inside a tent and Sisera's mother at a window. These are all Mary Cassatt sort of interiors which at first blush communicate powerlessness. But "all of Israel" come to Deborah's palm tree seeking guidance and advice. Sisera comes to Yael's tent for refuge, and Sisera's mother sits by her window pondering her son's success. Each of these locations explodes with paradox, and it is the paradox of each that invites us to break out of convention and expectation.

We begin with Sisera's mother. As an archetype, she is the enabling female leader. She gains esteem by virtue of her relationship to a famous man, her son. She leans on his reputation in order to create hers. There are many women throughout history who have achieved leadership in this very way. They married well or raised children who brought them pride, popularity and status. Marriage to a man of note or motherhood can offer a woman a platform for influence that she otherwise would not have had. The wives of influential rabbis or academics, political leaders or wealthy *parnasim* are often cast into important decision-making roles. Yet we see the reliance that such women on men have through the text of Judges. The passive way that Sisera's mother awaits her son's arrival reminds us that her greatness is only a shadow of his, not her own. She can use this platform positively and earn independent greatness, but its links are always tied to one another.

A woman earns her reward by sending her husband and sons off to the house of study and waiting for them to return.

This narrative also reminds us of a very different text, the statement in B.T. *Brakhot* 17a, that a woman earns her reward by sending her husband and sons off to the house of study and waiting for them to return. This enabling position places a woman at the window in an anticipatory role, albeit a much more positive one than that of Sisera's mother.

The second archetype showcased in these texts is the titled female leader, in this case Deborah. The Torah introduces Deborah as a woman of independent accomplishment but also as a woman trapped by acute gender consciousness. She articulates for Barak the consequences of allowing a female to be successful. If women are strong, it *ipso facto* implies that men are weak. Deborah reflects an important social reality of her day. It is true that female leadership, particularly of a military kind in her period, would most likely communicate that there were no men capable of the task. Barak was willing to endure this humiliation for the sake of victory and put aside his own supposed indignity for a greater purpose. Some believe that the general strength of female characters in Judges is the way that the book's author communicated weak leadership in a time of political anarchy. If the Book of Judges is a polemic to institute kingship in the land of

Israel, the presence of strong, militaristic women who defy female stereotypes is yet another technique to push a political agenda.

To relate this to a rabbinic text, we are all familiar with by now with the *Mishneh berurah's* position on women saying *Qiddush* that, although it is permissible, it is a *zila milta*, a derogatory act,[5] because assigning the task to a woman demonstrates that a man could not make *Qiddush* for himself or others. It is the rabbinic equivalent of saying that strong women mean weak men. In other words, both the domains of spiritual leadership and performance of religious rituals are zero-sum games. When one wins, the other must lose.

Spiritual leadership and religious rituals are zero-sum games: When one wins, the other must lose.

In contrast, Yael offers a very different approach to leadership. Hers is a leadership based on doing, not a passive or questioning leadership role. She is the archetype of the active female leader. She gains notoriety not through titles but through action. Her leadership is situational, and she does not use gender consciousness to stake out a position, get a title or make an observation. She has no time for that. She inverts gender consciousness to achieve a desired end. Her victorious moment is not in the saying but in the showing. Here is the man you are looking for. He is lying at my feet.

For an analogy, we turn to the rabbinic tales of Beruria, a woman who sought success in a traditionally male universe. Tradition teaches us that she learned 300 *halakhot* from different rabbis on one day, easily competing with any male scholar of her period.[6] In fact, she debates the likes of Rabbi Tarfon and even her father, Rabbi Hanina ben Tradyon and emerges victorious. "Beruria has spoken correctly."[7] Like Yael, she inverts the female paradigm. Unlike Yael, we find Beruria in a location typically associated with men, telling off men for not doing what they are supposed to do in a place where a woman is not supposed to be.

An Observation

Religious Jewish women have made enormous leaps in the past decades. They have broken the stained glass ceiling in their advancement of once forbidden knowledge. The enabling role presented in *Berakhot* still exists in many Orthodox circles, but within Centrist Orthodoxy it is becoming an increasing norm for women to be going to the *beit midrash* themselves (with an occasional husband waiting by the window for her return).

In terms of the Deborah model of leadership, we find more women assuming positions of leadership that come with accompanying titles, albeit the search for respectable titles for female Orthodox leaders has become itself an object of controversy and confusion. We are slowly—perhaps too slowly—understanding that Judaism is not a zero-sum game in which the success of women comes at the expense of the spiritual weakness of men. Robust, healthy religious communities understand that both knowledgeable men *and* knowledgeable women are necessary as role models for spiritual success and diversity within our communities. And yet, we seem to be essentially still playing Deborah's game of needing to articulate and examine, analyze and present the cost of having women assume power. We may come to Barak's conclusion, namely that it is laudatory for a war to be won by a woman, but we still need to say it. It is not natural enough to be assumed that a woman can function successfully in an arena typically associated with men. We have to make a point of it. Write articles about it. Question it. And that itself is a statement of gender inequity.

5. *Mishneh berurah, Orah hayyim* 271.
6. BT *Pesahim* 62b.
7. See *Tosefta Keilim*, *Bava metsi`a* 1:3 and *Tosefta Keilim*, *Bava qamma* 4:9.

Then we come to Yael. She had no title other than that of wife. She had a task in front of her and was the only one to do it. She did not ask anyone's permission. She only showed the result of her work and for it, was praised in her tents and far outside them. Naturally, the rabbis of the Talmud debated Yael's motives and what she actually did, attributing understandable sexual overtones to the text. They arrived at the conclusion that Yael did an *"aveirah li-shemah,"* a forbidden act with the right intentions.[8] This reading assumes that Yael's victory came about by using her female sexual wiles instead of relying upon conventional maternal, innocent incentives that are written into a literal reading of the text.

Too many women wait to be asked to assume leadership roles

I am not suggesting that any woman today keep a tent peg inside her briefcase (although it could come in handy). I *am* suggesting that too many women wait to be asked or invited to assume leadership roles (the wait by the window approach) or assume leadership and then struggle existentially with themselves in the Deborah fashion of leadership. It is hard to advance when we always question our own right to exist as leaders. Of course, there are halakhic issues to contend with, but, as is so often the case, it is not the *halakhah* that is at issue as much as it is purportedly halakhic assumptions about human nature that in reality are nothing more than social norms and conventions within very particular communities. This raises another difficult conundrum within Orthodoxy today: Who determines what is normative?

All of the discussion, the newspaper articles, the letters to the editor, the analyses and *shi`urim* about what we can or cannot do lead to paralysis. We should do and then show, and others will understand that we can. Yael has no doubts about her plan and executes it with aplomb. She is not boastful. She waits until Barak is in her vicinity to display her handiwork. But she also does not keep her success to herself. She did what had to be done and has been celebrated throughout Jewish history as a result.

We have yet to achieve this level of female leadership in the Orthodox community, a natural and unself-conscious positioning of women in key and critical leadership roles where women are encouraged to succeed not because they are women but because they are competent individuals who have the requisite talents to lead. When that day comes, there will be no more conferences on women and Judaism or journals dedicated to the subject. At that time, our leadership needs, most of which have nothing to do with gender issues, will be addressed together—both the *beit ya`aqov* and the *benei yisra'el*. The victory will then not be in the hands of a man or in the hands of a woman. It will be in the hands of the entire Jewish community—as it was meant to be.

8. BT *Nazir* 23b.

Making a *Simchah* of Maximizing Women's Roles in Orthodoxy

Gidon Rothstein

I have opinions. Many. Yet success in this essay will have little to do with whether I can convince you of the correctness of those opinions. Rather, I hope to shift our perspective from that of deciding right and wrong, agreeing and disagreeing about women's roles in general and in leadership. The more significant question, I find, is whom we include and care about in our discussion. Let me begin with what I hope is a pertinent parallel.

Making Others Comfortable: The Example of Hosting an Event

Suppose a Jew is making a *simḥah*, some kind of celebration he or she wants to share with friends and family—a wedding or engagement, a *Bar* or *Bat Mitsvah*. Being Jews, food will certainly figure prominently in this event. This particular Jew knows of a caterer he or she would like to use, and who is, for that Jew's standards, perfectly conscientious, perfectly acceptable, perfectly kosher. For the sake of the example, we can add that this Jew's halakhic advisor ratifies that opinion. Will s/he use that caterer?

The complicating piece of information is that other Jews question this caterer's reliability, or deny it in full. I submit that the host's calculus will be less about the objective truth than about whom this Jew does or does not care to make maximally comfortable at the affair.

There are, after all, numerous options facing our host. She could simply move forward as she believes right, use the caterer, and put the onus on the guests. Slightly less radically, the host could use the caterer but provide an alternative, such as airline dinners, from a source that the guests will find more acceptable. Or she can decide to use another caterer, simply for the sake of amity and goodwill.

The more significant question is whom we include and care about in our discussion.

Some of how the host or hostess handles the problem, of course, will depend on who is raising the objection and how serious it is. If a small minority of guests is worried about an arcane issue, the host would more likely use the caterer anyway and accommodate them on the side. On some issues, the host will decide there is a principle at stake and insist on using the caterer even if a larger group of guests object. If many of the guests were anti-Zionists, for example, and object to the caterer's Zionism (or vice versa), I can imagine some hosts insisting on using that caterer.

That most kosher caterers today seek broadly acceptable supervision shows that hosts by and large do not want to have to struggle with these issues; by and large they want all their guests to feel comfortable eating at their events. I write here to urge that a similar set of questions and considerations guide our discussion of women's issues.

Recognizing the Divide

Certainly over the past hundred years, the roles of women in society—and, perforce, in Jewish

society—have changed, and Orthodoxy, as it correctly does, has worked and is working to identify the changes it sees as positive, which may then be incorporated into its members' service of God; those it sees as negative, to be avoided; and those that are more debatable. The answers to these questions are sometimes clear, to the positive or negative, and sometimes murky, with reasonable people disagreeing over how much a social phenomenon fits Jewish standards.

My central claim here is that we should not only be asking ourselves whether *we* think some development or other is correct; we should also be asking ourselves who else's views matter enough to us to include their concerns when deciding whether to take on an innovative practice.

The actions of people and synagogues affect all of us, since they alter the discussion and change the atmosphere around an issue.

Some practices are almost completely private, and there the weight of one's personal perspective—in consultation with a personal halakhic advisor—properly figures more prominently than the mores of the broader community. Let us suppose there was some question about which words to say in one's private prayers—such as, for example, how to mourn Jerusalem in the *Amidah* on *Tishah Be-Av*. Since only God will hear those prayers, it seems the question is largely one of what one's halakhic advisor counsels.

Public Behavior and the Concerns of Maintaining a Sense of Community

When behavior is more public, however, the problems get stickier. Sometimes, those who object to a practice are truly outliers, properly ignored. And that can change over time. A hundred years ago, opponents of Zionism or the establishment of a State of Israel were probably the consensus view within Orthodoxy, and the decision to identify as a Zionist was a fairly radical one, bound to raise significant opposition. Those who did so anyway had to make an extremely difficult choice, to decide that the issue at hand was so important as to call for breaking with a broad community standard.

To return to our kosher caterer example, one might similarly choose to stand by this questionable caterer as a matter of deep principle. I have heard people complain, for example, about the disappearance of kosher but non-*glatt* meat; I could imagine someone being so upset about the extra cost this imposes on Jews struggling financially that someone would decide to insist on hosting a non-*glatt* affair, to make that point. I am not recommending it, but I can imagine it; I am only stressing that it should be in a situation where the principle is so vital that community and friendship pale in comparison.

For women's issues, to my mind, synagogue practice is always a public matter, since the example set by one synagogue will become fodder for others elsewhere, an acceptable standard that others will seek to emulate. Further, someone's choice to adopt an innovative practice will almost always affect their social interactions with those who oppose those innovations. I have, myself, several times been invited to celebrations where the food was undeniably kosher, but the religious rituals assumed the permissibility of ceremonies I and many other Orthodox Jews did not. The hosts' insistence on moving forward as he or she thought was right came at the cost of forcing some guests to choose between refusing to attend and swallowing their objections for the sake of social pleasantness. The host might be indifferent to having created that tension, but I suspect many such hosts are oblivious to it. It is partially to remind us of those concerns that I write here.

The actions of people and synagogues affect all of us, then, since they alter the discussion, change the atmosphere around an issue. This, incidentally, is something activists of all stripes explicitly recognize, when they speak of getting a foot in the door here, moving the yardstick there. This also means that the old liberal line about private behavior between consenting adults cannot legitimately apply to synagogue behavior by Jews, since what someone does somewhere necessarily affects those halfway across the world.

Debatable or Not: Types of Change in Orthodoxy

This is not to say that all changes from "what has always been done" are problematic; some are so well-accepted that they really should pose no challenge. For example, women forming a *zimmun*, a confraternity of three who have eaten a meal together, is a practice clearly attested and never objected to in halakhic sources.

While there is slightly more of a question about whether three women should do this even when one or two men are present, there are, again, well-attested sources that declare it not only permissible but proper. For women to decide to take on that practice, and for communal leaders to encourage it, properly creates little worry of whom we are or are not offending, since there is little if any room for legitimate offense at such a practice.

In more debated circumstances, I suggest we differentiate debates of right and wrong from those of "in" or "out." In the first category are all those arguments where both sides should recognize the legitimacy of the other as a systemically valid option. When rabbis argue over *halakhah*, they generally accept that their disputants on the other side also convey one of the seventy faces of Torah, much as they disagree with it.

There are situations, however, where one side does not merely view the other's decision as wrong but, instead, denies the other's systemic legitimacy. The Vilna Gaon did not *disagree* with early Hasidism, he *rejected* it as an option and felt obligated to do all that he could (little enough, in that instance) to prevent its spread. Within a community where such a question arises, both sides need to consider the cost of pushing it—those who will battle against it need to weigh the communal tension or rift in doing so, and those promoting the idea should properly consider how vital it is to push it, considering the likely consequences.

When I find cause for deep concern, it seems to me to be a clear warning sign.

I fully recognize and accept that some issues will be important enough to move forward even after taking all that into account. But if we are to maintain any sense of communal unity, these instances ought to be few and far between. While we live in a Western world that has gotten in the habit of making this true for every issue—civil rights, abortion rights, and sexual rights chief among them with a growing interest in pushback legislation on those and other issues—the Jewish perspective, it seems to me, is that man-the-barricades emergencies do not come up every decade, let alone every year.

Dangers on the Horizon

To be more specific, I would like to highlight a few areas of personal concern about how the conversation about women's issues is moving forward in some circles. I stress here that I look to myself not because I feel myself to be the infallible arbiter of what is or is not Orthodoxy, but because I have always sat on the left wing of Orthodoxy. When *I* find cause for deep concern, it seems *to me* to be a clear warning sign. Obviously, those who disagree with me will not see it that way, but my point is not that I am obviously right, but that if even the *left* (or the former left) comes to feel this way about what is going on, I would hope the

hosts of this party would consider looking for a more broadly accepted *hashgahah* before moving forward.

I first question the Orthodoxy of the ideas entertained in some of these conversations and some of the people seen as valid participants. Friends and colleagues in the rabbinate bitterly oppose this line of my reasoning, and I advance it with no pleasure or relish; nonetheless, in more than one context—and not just around women's issues—it has become clear to me that these conversations are often grounded in ideas and/or host participants who have, from their start, left Orthodoxy.

Stepping Outside of Orthodoxy

Let me start with halakhic issues. I do not have the room here to fully describe the difference between an Orthodox and a non-Orthodox halakhic process—nor do I claim to be able to do so with perfect exactness-- but it should be clear that such a difference exists. After all, Reform and Conservative rabbis and thinkers believe that they too make valid halakhic claims; we Orthodox reject not only their specific ideas, but the underlying assumptions they make about the workings of *halakhah*. In offering ideas about how women's roles in Orthodoxy might change from the past, I would hope that we would insure that the arguments advanced, and sometimes accepted, be at least legitimately Orthodox halakhic ones.

That an argument cites sources from the Talmud, rishonim, and aharonim is taken to mean that it is an Orthodox halakhic argument; many do not believe this is so.

To argue that point with specific examples would take me too far astray, and would almost always be open to vigorous debate, but that, too, would miss the point. The question is not whether this or that person agrees with me that some halakhic claim is invalid, but how the fact that I and many like me find it to be so affects those interested in that innovation. In some circles, the fact that an argument cites sources from the Talmud, *rishonim*, and *aharonim* is taken to mean that it is an Orthodox halakhic argument; but we ought to remember that many do not believe this is so, and all those who then follow that conclusion will be, in the eyes of others, following a non-halakhic and non-Orthodox point of view.

I tried to make this argument in a particular instance several years ago, and was prohibited from so doing, since such claims are never accepted by those who like the idea. Once again, right and wrong become less of the issue than our willingness to simply ignore those who see the matter differently than we do.

Participants in the Conversation

In any conversation about where Orthodoxy should go, it seems obvious to me that all the contributors should have to be Orthodox. Of course, non-Orthodox people can have good ideas as well, but we look at those as outside ideas, to be considered more cautiously and accepted more gingerly, than when a fully Orthodox person offers the idea.

I raise that concern because I repeatedly have conversations with influential members of Jewish communities who reject basic premises of Orthodoxy. In private, I have spoken with various people of Jewish communal influence who admit that they do not really believe in God, or in prophecy, or in an Oral Law, or in any form of Divine Providence, or in the Exodus from Egypt.

It is not for me to judge them, nor do I know how God balances their beliefs against the great good they do for the Jewish community and the world; it *is* for me to know that their opinions on how Orthodoxy should move forward are, to some, inherently tainted, since they do not operate within the required parameters of an Orthodox life. And yet, on

women's and other issues, such people are vehement and influential participants.

I use those examples of lack of faith because they are relatively indisputable; I know other prominent members of the conversation with whom I am uncomfortable for reasons that are less clear-cut. My opinion, again, is not important for its own sake, but for what it says about how we are conducting this conversation; if relatively left or center people are uncomfortable with the Orthodoxy of certain thinkers or lay people who are prominent members of the conversation, we have to consider how that affects the reaction to the ideas that come out of that conversation.

In trying to formulate this idea, I note that people with whom I have discussed it have sometimes said to me, "Well, so-and-so is a part of the conversation, and s/he is obviously Orthodox." This is a line of reasoning I find doubly concerning. First, and more importantly, the issue isn't whether a particular *subset* of the conversation is undeniably Orthodox; it is whether the *entirety* of the conversation is so, since only that will convince outsiders that the results are Orthodox as well.

Second, and almost as disturbingly, in several of these discussions, people have mentioned names as undeniably Orthodox whose Orthodoxy I know I and many others vigorously deny. That we no longer even know how the other side of a debate experiences an issue is, to me, worrisome as well.

Public Affiliations Outside Orthodoxy

The same goes, as far as I understand it and as difficult as it is to say, for those who publicly affiliate outside Orthodoxy. The definition of one's personal religion is and probably should be highly personal—I have no interest in "checking *tsitsis,*" and no sense that I would do all that well in such a check. At the same time, joining an Orthodox conversation should require at least the personal claim of Orthodoxy, a claim has always been seen as immediately contradicted by publicly affiliating outside of Orthodoxy.

It was well-understood, at least when I was growing up, that to be the rabbi of a Conservative synagogue did not necessarily say anything about observance—many such rabbis were fully observant, as Orthodox Jews would define it—but clearly did remove that person's ability to participate as an insider in Orthodox conversations.

Joining an Orthodox conversation should require the personal claim of Orthodoxy

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I raise this issue because we today witness several institutions that do not go so far as to identify with Conservative Judaism, but also refuse to define themselves as Orthodox. Nonetheless, these institutions, and their leaders sometimes insist on their right to be part of Orthodox conversations nonetheless. In some cases, it might be argued that the institutions really are Orthodox and the label is left off for public relations reasons. But there are also institutions that have never had any Orthodox connection, that continue to refuse to affiliate with Orthodoxy, and yet whose leadership strive mightily to be respected voices within Orthodoxy.

Again, others can see this issue differently than me; I am used to it and expect it. But in each of the cases I have advanced so far, the decision to continue on the current path stretches the definition of Orthodoxy in ways I personally find untenable, and, as I said before, if I see it that way, there are many others to the right of me. It is not that my view should count for so much, it is that is should signal to those who follow this path nonetheless should be fully aware of the choice they are making in doing so.

Values and Priorities within the Search for Greater Opportunities

Along similar lines, some of the emphases of those seeking to expand women's roles seem to me unfortunate, and to reflect a concern with gender identity rather than maximal opportunities for women. In Western society, the move to improve women's lives and options has for a long time—the pendulum may be swinging back, but it will take time for it to reach Orthodoxy—operated under the rubric of identity, that women should be treated just the same as men.

The search for women's identity to men should never get off the ground in Orthodoxy.

This idea, as stated, is a clearly non-Orthodox one, since the Torah, *halakhah,* and pretty much all of Jewish thought have always assumed that there are significant differences in how the two genders best relate to God. Some of those expressions of difference are distasteful to modern women, and I see the value in carefully scouring tradition to find the most appealing plausible expression of the religion's ideas.

In particular, many of the changes women seek can be comfortably accommodated under the rubric of expanding opportunities. This is not, and should not be, an attempt to be more like men (except where what men do is the only and best way to get closer to God), but to be sure we are aware of all the possibilities for productive religious and spiritual activity, for building the best relationship with God possible for each adult Jew, male, female, or other.

This distinction, to me calls into question some of the focus on clergy roles. The Orthodox left has been host, in the past year, to prominent attempts not only to have women serve in quasi-clergy roles, roles that until now have been restricted to rabbis, but also to giving those women a title not just that reflects what they do, but that certifies that they are really functioning as rabbis, title notwithstanding.

Function Deserves a Title

I am all in favor of finding appropriate titles to give people the respect they deserve for the functions they fulfill; I think it is important for their own self-image, and for the attitude of those who deal with them. Yet in all of this, there is a line, hard to define, between doing so in the name of insuring that the Jewish community benefits from all the talent in its midst, in the name of maximizing all Jews' abilities to serve God, and in doing so in the name of breaking down barriers, of getting women to be able to be more like men.

Many will deny that this is what they are doing, and I cannot presume to know them better than they know themselves. I can, however, be clear about how these actions seem to me, and the reaction such actions will stimulate in me and in a large group more to the right of me, who feel all that I am saying, and more.

To conclude with the promised opinions: I strongly believe in the importance of the conversation around how to maximize women's roles within Orthodoxy, but think that any such conversation needs clear parameters. To me, those parameters include an insistence on the Orthodoxy of the conversation, in its underlying premises of belief and *halakhic* process, in those welcomed as contributors to the conversation, and in its framing. The search for women's identity to men should never get off the ground in Orthodoxy; the search for maximal opportunities to help women achieve what God and the Torah define as a successful life should continue with all appropriate speed.

At the *simhah* of Jews' living together in harmony, whom do we wish to include? When are we satisfied going our own way, and letting all those who object fend for themselves?

When do we proceed more carefully—and, sometimes, less satisfyingly—in ways that allow for the maximum percentage of Jews to join or, at least, respect the legitimacy of the options chosen? It is the answer to these questions as I see among the most pressing for the various streams of Orthodoxy today.

Reflections on Five Years of Jewish Leadership

Dina Najman

Five and half years ago, I was privileged to become the *Marta d'Atra* (halakhic authority) of Kehilat Orach Eliezer (KOE). As I reflect on my time as the spiritual leader (the congregation refers to me as *Rosh Kehilah—"Head of the Congregation"*) for KOE, I would like to acknowledge my deep gratitude for the institution that appointed me as their leader. First, for the courage to hire a woman as their *Marta d'Atra*. Second, for the value they have placed upon my service to the *kehilah*. Third, for how the position itself served to develop me professionally and give me hope for the future of *Kelal Yisrael* and the pursuit of *Torat Emet*.

KOE was established upon the foundation of *hesed*. As it had been explained to me many times, the KOE *minyan* began in the home of Rabbi Eliezer Finkelstein, *zt"l,* who was too infirm to go to a nearby Orthodox *minyan*. In response to this situation, a number of individuals came together to ensure that he would have a *minyan* in his home. The level of halakhic observance, the commitment to acts of *hesed* and the welcoming nature of the community have continued as core values of the *kehilah*.

Throughout its nearly two decades, the members of KOE have understood the importance of creating a community of Jewish men and women dedicated to Torah, *mitsvot* and *Medinat Yisrael*. The welcoming environment which they have established, their support for learning, *tefillah* and service to others, serve as a model for any Jewish institution. KOE's membership recognized that rather than be an obstacle to a community's cohesion or an indication of religious passivity, appointing a communal leader is a necessary and integral part of a vibrant and religiously committed community.

While alternative *minyanim* have demonstrated that *tefillah* and membership organizational involvement can lead to a successful *tefillah* experience, often the necessary spiritual guidance and availability are lacking. There are times in people's lives which necessitate the advice and input of a spiritual leader for halakhic questions and life cycle events. There is definite value for a community to have a specific individual available to aid its members in working through personal and familial problems, existential dilemmas, and even questions related to a biblical narrative or other texts.

The knowledge that the community has appointed and hired a professional to attend to its needs, and the implicit knowledge that this individual has a commitment and dedication to the membership and wider community, fosters a bond which allows for this dialogue. My understanding of the role of a spiritual leader derives from my experience as a member of a number of exceptional communities that have a *Mara d'Atra*. I note that there have been times when members of communities that did not have a spiritual leader in place called on me for halakhic guidance for their community, for personal questions, guidance for various life cycle events, and requested my assistance in selling their *hamets* before *Pesah*. These are the functions of a *Mara d'Atra* that are often unnoticed and unappreciated.

After the retirement and *aliyah* of Rabbi David Weiss Halivni, who helped found the KOE *minyan* and served as the *Mara d'Atra* for many years, the *kehilah* formed a search committee to identify a person who would best meet the needs of the community. The committee began interviewing men who had received *semikhah* from Yeshiva University or Yeshivat Chovevei

Torah. During this process, the *kehilah* began to question whether it was possible to extend the search to women who have spent significant time learning the primary and secondary texts of the Jewish Orthodox tradition. Even though Rabbi Weiss Halivni had already been in Israel for a few years and there had been intermittent transitional rabbinic leaders, the *kehilah* sought his advice. He answered that the search committee could include women who had reached the appropriate level of skill and scholarship.

I was recommended to the search committee by Rabbi Dov Lerea and further recommended by some of my rabbinic mentors and colleagues from Yeshiva University, Yeshivat Chovevei Torah and Drisha Institute. When I first spoke to KOE's search committee, they made it clear that there were men as well as women being considered for this position. What was exciting to me about this position, and quite frankly what enabled me to accept it, was that the position was available to both men and women who had studied and were proficient in the areas of *halakhah* required for a spiritual leader of a congregation. Given that this was not to be a junior position, they wanted a person who was experienced answering halakhic questions and could fill the role of a *Mara d'Atra*. Therefore, in addition to the formal education, the search committee wanted someone with practical life experience to deal with the various needs of the different constituencies of the community. This is what appealed to me and what I am now thankful for—the opportunity to serve the Jewish community by educating and leading irrespective of gender would allow the empowerment of individuals who could best inspire and teach others. Never, during the past five years that I have served as the leader of KOE have I ever felt compromised in my role due to my gender. The feedback and devotion of my *kehilah* has inspired me and brought me to places of greater growth and development. I do not take this role for granted. Although there have been women in our *mesorah* who have served in positions of leadership both in communal life and in *yeshivot*, I am fully aware that my appointment as *Marta d'Atra* of KOE has provided me with an opportunity that no Orthodox woman in modern history has been given. I have been given the opportunity not only to serve but to be the leader of an Orthodox community where I am empowered to set the halakhic standards. My position has always been focused on working with the synagogue board, the membership and other Orthodox communities, in order to strengthen a connection to *Ha-Kadosh Barukh Hu*, to adhere to His Torah and to reinforce commitment to *halakhah*. The position of *Marta d'Atra*, which KOE created, has given strength to other women in learning institutions that there could be professional opportunities in the field of synagogue leadership within Orthodoxy. Furthermore, KOE served as a model for communities to think about possibilities of women serving in communal leadership positions.

Never during the past five years that I have served as the leader of KOE have I felt compromised due to my gender.

On the personal level this position created a venue in which I could actualize my potential and gain a measure of fulfillment which I had not previously had before. This professional path was not something I ever envisioned for myself or thought possible to consider as an Orthodox Jew. No Orthodox institutions of advanced study presented this as a possibility and there were no *kehillot* bold enough to extend such a position of leadership. When I was approached to apply for this position, I had already been teaching Torah and answering halakhic questions in many venues, including scholar in residence speaking engagements and advising *rabbanim* on issues of bioethics and *halakhah*. I therefore felt an intern or assistant position was not appropriate for my level of experience. I recognized that this would be an opportunity to serve the community through

teaching Torah, guiding the membership in the area of *halakhah*, and providing pastoral care. I also understood that it was a unique chance to actualize my potential in the Jewish community.

It is ironic that with all of the fanfare and debate about women in communal leadership roles, it almost never comes up in my day-to-day involvement with my *shul.* My time is occupied by overseeing the *davening* and *leining*, preparing for *haggim*, learning with the community through *gemara* and *halakhah shiurim*, delivering *derashot*, answering *kashrut, niddah* and other halakhic questions, life cycle events, counseling members, and working with the Board and lay leadership to sustain the congregation financially and meet the needs of its various constituents. The *kehilah* needs their leader to put her head, heart and soul into all facets of the congregation to enable it to succeed. The pressure of this job is not about gender, it is about finding those extra hours in the day to make sure every person is taken care of, that questions are answered, that the *minyan* gets organized, that the concerns of the *kehilah* are being addressed.

With all of the debate about women in leadership roles, it almost never comes up in my day-to-day involvement with my shul.

One of the disappointments for me was that there were people who had a difficult time acknowledging that this position was within Orthodoxy. Even though it was clear to me and many other Orthodox *rabbanim* that the position was within an Orthodox framework (the synagogue functions in accordance with Orthodox halakhic standards and process), there were individuals who tried to de-legitimize the position and say untrue statements about my position, my congregation and about me personally. Malicious comments on the Internet, often anonymous, are nearly impossible to correct and refute.

I have tremendous gratitude to *Ha-Kadosh Barukh Hu* for all the *berakhot* given to me in my life. Hashem has blessed me with a beautiful and an exceptional family. I have always had the support from my parents, parents-in-law, siblings, siblings-in-law, aunts and uncles who have all encouraged and assisted me on this journey. My extraordinary husband, James Licht and I have three remarkable children. I am forever grateful to my loving and devoted husband and children for their tireless efforts in their support of me and my position at KOE.

I have been privileged to have encountered wonderful congregants and built meaningful relationships with them. The membership and, in particular, those who advised and offered wise counsel have immeasurably impacted me both personally and professionally. Through questions, reflections on my *divrei Torah* and conversations shared during our meals at our home, our relationships have become richer and mutually supportive.

I am fortunate to have benefited from the vision and courage of others in the advancement of women's Torah education and leadership. Rabbi Saul Berman, Blu Greenberg, Rabbanit Chana Henkin, Rav Yehuda Henkin, Rabbi Dov Linzer, Rabbi Dovid Silber, Dr. Haym Soloveitchik, and Rabbi Avi Weiss, to name a few. Today, there are many competent women and men who serve in positions of leadership of educational institutions. These individuals have enabled a tremendous growth in Torah learning. Were it not for the efforts in the last three decades, positions like mine would not be available to Orthodox women. Today, there are women as heads of learning institutions. Thanks to the advancement of women's learning from institutions like Drisha, Nishmat and others, women are prepared to serve in roles of leadership in Jewish communities as well. In addition to the scholarship acquired, women

are now able to care for the needs of the Jewish community at the highest level. It is up to the individual *kehilot* to recognize the positive effect that women can have on their community.

I encourage our communities and institutions to open their communal positions to all those who are proficient in areas of Torah scholarship and *halakhah*. In this way, we will widen the pool of talented and passionate individuals who can inspire an increased commitment to Torah and *Am Yisrael*. Moreover, women and men working as colleagues creates mutual respect that strengthens the quality of the education.

The Ralbag compares Devorah's prophecy to that of *Moshe Rabbeinu*. He explains that Devorah is called *aishet lapidot* ("woman of the fires") to convey the level of prophecy, such that people would see flames around the place where she would receive prophecy, similar to the Torah's illustration about *Moshe Rabbeinu*. The connection between Devorah and Moshe is evident through many other parallels. In *Parshat Yitro*, we see the entire nation coming to Moshe for judgment. In the Book of Judges, Devorah similarly judges under the palm tree. Moshe and Devorah both compose a *shirah*, a song. The leadership that Devorah gives to *b'nai yisrael* for forty years parallels the forty years that Moshe leads *b'nai yisrael* in the desert. Their rulings were sought out, accepted and served to unite *am yisrael*. Moshe and Devorah's success is attributed to each one's vision and leadership.

Ultimately, women being empowered and having a legitimate voice only facilitates more leadership and learning within our community. That more people are engaged in Torah observance and learning needs to be seen as an advancement and achievement for *Am Yisrael*. Beyond this is the increased sensitivity and acknowledgement of the various roles that people can play in the community and a heightened sense of respect for one another.

It has been a unique privilege to be a part of Kehilat Orach Eliezer, a religious community that acknowledges that true leadership should be based on skill and not gender. It is with tremendous gratitude and devotion that I serve my *kehilah*. It is my hope that this position at KOE can serve as a model for other institutions to create the possibility for qualified women, as well as men, to serve them.

Meorot
A Forum of Modern Orthodox Discourse

The Challenge of Halakhic Innovation

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Abstract: This article defines a vision of *halakhah* and the rabbinate that identifies with modern life and works to advance religious life within Israel and Western societies. It argues for a *halakhah* and a rabbinate that is sensitive to *Kelal Yisrael*, Zionism and Israeli democracy, to the interests of women, the handicapped and that can speak to all Jews. It wishes to return Torah its original domain—every aspect of human life. The author rejects the superiority of halakhic stringency and advocates the use of *hiddush* to confront the realities of modern life, seeing the former as traditional halakhic methodology.

Meorot 8
Tishrei 5771
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A Publication of
Yeshivat Chovevei Torah
Rabbinical School

The Challenge of Halakhic Innovation*

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Modernity as a Value in the World of Torah

This article[1] is written following an extended series of attacks against the segment of the religious community and its rabbinic leadership that identifies with modernity and works to advance halakhic life within the Israeli and Western context. We are aware of numerous halakhic issues in need of attention and clarification. They pertain to all areas of life, private and public alike, and relate to matters such as marital and family law, conversion and rights under the Law of Return, the withholding of divorce by recalcitrant husbands and the policies of Israeli courts in that regard, *kashrut* seen from the perspective of the broader community, principles of social justice and their realization in Jewish society and questions of morality. Yet despite the pressing nature of these issues, every request for halakhic innovation has been met with a solid wall of resistance by the official Israeli Rabbinate, which believes that acquiescence in any proposed changes would open the door to Reform. The constant concern about any openness to change is smothering the *halakhah* and choking off any development; and the policy of "the new is forbidden by the Torah"** is gaining control over the entire expanse of our religious life.

We have long since gotten used to regular invalidation by the *Haredi* public, which regards Religious Zionism as a spiritual enemy. In recent years, however, a spiritual struggle has broken out among various streams of Religious Zionism, and most recently the modern stream has been classified as "neo-reformers." Not content with that terminology, the (right wing) advocates have sought to follow in the path of the *Hatam Sofer* and Rabbi Samson Raphael Hirsch. They rend not only their garments but also the national-religious camp, dividing those considered faithful to the Torah from those regarded as "neo-reformers." The call to do so aroused a substantial public outcry, but it did not produce any probing analysis of the true divide between those who issued the call and the modern public that seeks and demands renewal of the Torah. It is not enough to convene a conference of reconciliation and declare our common commitment to the *Shulhan arukh*. Such steps can promote popular social policies that preserve collegiality and maintain an educational system in which children from both the *Haredi*-nationalist ("*Hardal*; an abbreviation for *haredi-le'umi*) and modern streams learn together, but more than that is needed. What we truly must do is to formulate for our students and children a position that advances our views as sound ideals (*le-khatehilah*) rather than merely as some after-the-fact compromise and that does not obscure our own worldview.

In the world of Torah, Rabbi Aaron Lichtenstein is considered the clearest spokesman for the group seeking to advance

* This article originally appeared in Hebrew in *Akdamot* 23, *Elul* 5769 (2009). The controversy and importance of the issues which it discusses have only increased in Israel and the United States since its original publication. Translation from the Hebrew by Joel Linsider.—ed.

1. I would like to thank my wife Noa and my son Yedidiah who read and commented on an earlier version of the article.

** This slogan is a play on words, coined by the Hatam Sofer in his counter-revolution against early reform. He transformed the halakhic ruling "[consumption of] the new [season's grain before the designated time] is forbidden by the Torah" into a slogan opposing all innovation—"the new is forbidden by the Torah."—*translator's note.*

the policies of the modern religious community (sometimes referred to as "centrist Orthodoxy"):

> Centrist Orthodoxy finds itself increasingly under attack. While the possibility of attack from both right and left is endemic to centrism by virtue of its dual exposure, the nature and extent of criticism varies. At present, I believe, particularly insofar as the Right is concerned, it is perceived by attackers and defenders alike as being particularly intensive, broad in scope, covering a wide range of thought and activity, and penetrating in depth. It consists … of a radical critique, questioning the fundamental legitimacy and validity of the basic Centrist position.[2]

We must formulate for our students and children a position that advances our views as sound ideals.

The school led by R. Lichtenstein was imported in part from the United States, where it had been led by his father-in-law, Rav Joseph B. Soloveitchik, of blessed memory. It is a Judaism that will not forgo the slightest detail of the *halakhah* but is unwilling to confine God's world to the proverbial four ells of the *halakhah*. The bounty granted by God to the world through human wisdom is meant to enrich Torah and elevate the religious personality to greater spiritual heights. Humanism improved mankind and revealed the light hidden in all God's creatures. Together with Rabbi Lichtenstein, Rabbi Yehuda Amital, *z"tl,* led his students to a moral life far removed from "irksome religiosity," a life of integrity and energetic action within the religious world.[3] Their yeshiva, Yeshivat Har Etzion, and those aligned with it have begun a powerful process within the national-religious community—a revolutionary way of studying Bible, a teacher training college affiliated with the yeshiva, and hundreds of alumni engaged in productive work of all sorts throughout Israel.[4]

Like every movement, the one we are discussing has strains that are more conservative and others that are more innovative. To the yeshiva's left, there arose a more radical movement of religious revival, centered on Rabbi David Hartman's study hall, which sought more forcefully to take on rabbinic authority and halakhic decision making. Its integration of the academy—that is, the university—into the world of Torah generated much opposition, including the issuance of bans and excommunications. As a member of Bet Morasha of Jerusalem, an institution marking almost twenty years since its founding, I can say that that battle is now almost over. Rabbis with academic training are no longer an oddity and many, unafraid of what the academy has accomplished, have sought to acquire the research tools that will deepen their study of Torah. We are witnessing the slow but steady development of a stream within Judaism that is open and serious, diverse yet marching in one direction—returning the Torah from its exile and restoring it to its proper place in the broad expanse of life.

In this article, I will first sketch in general terms the image of the halakhic decisor in modern society and then briefly describe the

2. *By His Light: Character and Values in the Service of God*, based on addresses by Aharon Lichtenstein, adapted by Reuven Ziegler (Alon Shevut: Yeshivat Har Etzion, 2002), p. 220.
3. Some of Rabbi Amital's remarks are collected in *Ve-ha-arets natan li-venei adam* (Alon Shevut, 2005).
4. In fact, the teachings of Rabbi A. I. H. Kook had the potential to inspire a process of this sort (see, for example, Benjamin Ish-Shalom, *Ha-rav Quq—bein ratsiyolaizm le-mistiqah* [Rabbi Kook—Between Rationalism and Mysticism] [Tel-Aviv, 1990], p. 292). For various historical reasons, however, it is not Rabbi Kook's teachings that are the key factors behind this process today.

influence of modern society on halakhic decision making. It goes without saying that these subjects cannot be fully treated in one short article, and I will be able to touch only on some highlights. With God's help, the time and place to expand the discussion will come along.

1. Transparency and Trustworthiness as Conditions for Transmitting Torah

Within the halakhic world, there is a well known tendency to react with suspicion and antagonism to previously unfamiliar innovations and lenient rulings. Something unaccepted in the past is not greeted enthusiastically in the present. For many centuries, great Torah scholars were concerned that transmitting Torah to the masses would bring about a diminution in its status and lead to an unraveling of the *halakhah* through faulty interpretations. Even in talmudic times, we find that the *amora* Rav would rule in accord with the more lenient position when studying with his students, but take the more stringent position when delivering a discourse before the masses. Those who were learned possessed the keys to halakhic ruling and to the determination of what was permitted and what was forbidden, and they ran society from that position of power.[5]

Five hundred years ago, the introduction of printing revolutionized the way halakhic decisors thought about the significance of knowledge as distinct from understanding. Today, once again, the internet revolution is fundamentally changing the rules of the game. Data bases appear before our eyes at an unimaginable pace. We are in the midst of a process that cannot be yet be fully analyzed and assessed. A person seated at home before his computer can access, by the click of a mouse, all the information he needs to resolve his questions. Anyone suffering from a medical problem is familiar with the process. "A wise man's question is half the answer"—by asking the right question, you can instantaneously obtain a range of articles and reviews about the symptoms that are troubling you. Equipped with that information, you go to the doctor and ask his opinion. If you prepared yourself properly, he will have no more information than you do, but he will know how to analyze the sources you bring with you. He will sort though those sources for you, recommending some and rejecting others. The sage's strength lies not in his information but in his analysis.

Judaism is marching in one direction—returning the Torah from exile and restoring it to its proper place in the expanse of life.

So, too, in the world of *halakhah*. Knowledge has moved into the public domain. Everyone can know everything. Halakhic sages must recognize that change and become advisors and navigators on a sea of uncertainties. The Torah's truth is revealed in all its expansiveness. The rabbi is expected to know and present the various aspects of each issue and not to conceal those aspects that are inconsistent with his own point of view. If a rabbi is untrue to the sources and reaches his decision without taking account of conflicting views, he will be seen to be untrustworthy. And a lack of trust between a rabbi and his community of questioners will drive a wedge between that community and the Torah overall. Stating the truth, of course, does not require the decisor to remain neutral; his role requires him to reach a decision one way or the other. But the decision must be reached through disclosure, not concealment, of the alternatives.

Let me offer one example to explain the phenomenon. A major transformation in Bnei Akiva involved the separation of boys and girls. The change was instituted by Rabbi Samuel Katz, who issued, in 1978, a pamphlet entitled "*Qedoshim tihyu*" (You shall be holy).

5. On this, see my article "*Aseh oznekha ke-afarkeset: ahrayut, tsenzurah ve-limmud ha-torah be-idan ma'agrei ha-meida* [Responsibility, censorship and Torah study in the age of data bases], *Akdamot* 14 (2004), pp. 155-174.

The pamphlet includes a responsum by Rabbi Shlomo Aviner regarding membership in a mixed youth group. In his full responsum, Rabbi Aviner cites sources in support of his firm conclusion that co-ed activities are absolutely forbidden. Amnon Shapira, of Tirat Zvi, undertook a critical reading of Rabbi Aviner's responsum and demonstrated that the sources were used very imprecisely, to put it mildly. Rabbi Aviner's stringent interpretation of the sources can lead to serious harm. He writes, for example, "at work, too, there should be no mixing." The source he cites for that prohibition is a responsum by Radbaz, but an examination of that responsum itself shows that Radbaz was speaking of Jewish women going to work as "outside workers" in gentile homes for days at a time. On that basis, Rabbi Aviner drew his conclusion about working in the State of Israel.[6] When a student discovers this sort of move, his faith in the rabbi's decision making is undermined not only with respect to the ruling at hand but with respect to all others as well. Thirty years ago, Amnon Shapira had an advantage over others, for he knew the sources and could check them one by one. Now, when everyone has access to the Responsa Project data base and Google provides answers to all imaginable questions, everyone can check every responsum and examine its trustworthiness. A rabbi who rules in an oversimplified way, whether strictly or leniently, in a area of halakhic complexity will be caught as untrustworthy.

More than a century ago, in 1909, Rabbi Kook of blessed memory noted the duty of halakhic decisors to be trustworthy. He was writing in the context of a dispute with the rabbinic court of the Jerusalem *Hasidim*. Rabbi Kook had certified as kosher for Passover a factory that produced sesame oil,[7] and the Jerusalem rabbis argued that his permissive ruling damaged the wall of *halakhah*. If the smallest opening were allowed for the view of those who ruled leniently, they feared, the entire wall would be breached. Rabbi Kook's response deals with the substantive issue of how halakhic rulings are received by the community. Against the

A rabbi who rules leniently or stringently without taking account of conflicting views will be seen as untrustworthy.

Haredi claim that this leniency would undermine the entire wall, Rabbi Kook wrote as follows:

> I have already written to their Torah honors [an honorific term used for one's interlocutors] that I well know the character of our contemporaries. It is precisely by seeing that we are willing to permit whatever an in-depth reading of the law makes permissible that they will understand that we are permitting it because of the truth of Torah, and many who adhere to Torah will come, with God's help, to heed the words of halakhic teachers. But if it is found that there are things that the law itself would permit but that the rabbis leave as prohibited, showing no concern about the resulting burdens and difficulties imposed on Jews, the result will be, God forbid, a great desecration of God's name, as many of those who violate *halakhah* will come to say of important principles of Torah that if the rabbis wanted to permit them, they could do so; and the law will be perverted as a result.[8]

Rabbi Kook's words should penetrate deep into the consciousness of our halakhic decisors. His novel point here is that the

6. Rabbi Aviner's responsum and Amnon Shapira's comments were published by Bnei Akiva in a pamphlet entitled *Hevrah me`urevet bi-venei aqiva be-yameinu* [Mixed groups in Bnei Akiva today] (Tevet 5741 [Winter 1980-1981]).
7. For a careful analysis of the dispute, see Haggai Ben-Artzi, "*Idiologiyah u-pesiqat halakhah* [Ideology and halakhic ruling], in Amihai Berholtz, ed., *Masa el ha-halakhah* [Journey to the *halakhah*] (Tel-Aviv, 2003), pp. 177-195.
8. *Responsa Orah mishpat*, 112.

"slippery slope" is a risk associated not only with lenient rulings but also with unnecessarily harsh rulings that close the doors of possibility. The rabbis of Jerusalem feared that opening a door would undermine the entire building, but Rabbi Kook, in a mirror image of their position, fears that excess stringency will impair the relationship between Israel and its Father in heaven. If Rabbi Kook could portray the community of a century ago as understanding and knowledgeable, what should we say of our generation, exposed to all its data bases?

2. On the *Poseq*'s Sensitivity: "What If It Were Your Daughter?"

The foregoing comments by Rabbi Kook contain an additional insight. He describes the feelings of a person who comes to a rabbi with a question and senses that the rabbi does not share his sorrow and his pain. When a rabbi could have ruled permissively or at least struggled with the issue but instead cuts straight to an unambiguously strict ruling, a desecration of God's name results. A considerate and lenient ruling can bind the public to the Torah and bolster the observance of *halakhah* within Israel. Slanderers allege that many questioners are interested only in attacking and annulling the Torah, but arrayed against them are the myriads of Jews, at all times and all places, who demonstrate that loyalty to the Torah is not impaired by the need for lenient and thoughtful halakhic rulings. The examples are numerous and I need not enumerate them here.[9]

Applying excess stringency in the face of possible leniency is a relatively recent phenomenon not previously accepted by halakhists. One even finds earlier disputes among decisors in which one side strives mightily to rule with leniency while the opposing side makes little if any effort on behalf of a strict ruling. One explanation for the new phenomenon is that offered by Rabbi David Siegel, a leading seventeenth-century decisor and author of *Turei zahav* (Taz). At issue was whether the new season's grain (*hadash)* grown outside the Land of Israel could be consumed without regard to the timing conditions applicable to *hadash* in the Land of Israel. The leading decisors of the Mediterranean region had ruled strictly, forbidding *hadash* outside the Land of Israel as a matter of biblical law (*mi-de-orayeta*); the Ashkenazi decisors in northern Europe, in contrast, sought a way to rule leniently.

Applying excess stringency in the face of possible leniency is a recent phenomenon.

Historical and geographical analysis of the issue shows that only in Ashkenaz and in Yemen did avoiding *hadash* pose existential problems; in Spain and other Mediterranean lands, conditions made it easy to refrain from eating *hadash.* The Taz offers the following explanation for the strict Sefardi rulings: "Those decisors were not concerned about hardship in this regard, for in their lands, where the climate is warm, there was no hardship at all [in avoiding *hadash*]."[10]

In other words, the burden and hardship associated with avoiding *hadash* did not affect the communities in which the Sefardi rabbis

9. Rabbi Prof. Daniel Sperber has treated the issue in his book, *Darkah shel ha-halakhah* [The Way of *Halakhah*] (Jerusalem, 2007). Sperber there presents dozens of examples of a halakhic approach that is congenial to the questioner and attentive to his distress.

10. *Yoreh de`ah* 293:4. I treated this question comprehensively in a study of *hadash* outside the Land of Israel. A summary that that study appears in "*Masa be-aron ha-sefarim ha-hilkhati—gilgulei mitsvat hadash be-toledot ha-halakhah*" [Journey Through the Halakhic Library—the Evolution of the Commandment Regarding *hadash* in the History of *halakhah*], in *Masa el ha-halakhah* (above, n. 7), pp. 127-156.

worked; accordingly, they were under no pressure to explore the issue thoroughly so as to find possible ways of ruling leniently. But all the decisors in those lands where leniency was needed enlisted in the effort to help the public and made every effort to relax the prohibition.

Were they your daughters, would you demean them in this way?

When an individual or a group sees that a decisor makes no effort to help deal with sorrows and hardships, that individual or group will lose faith in the entire halakhic apparatus. Every day we encounter intelligent and educated people who have run into a wall of resistance erected by rabbis who, in their concern about slippery slopes, forbid what is permitted and pay no attention to the cries of Jews and the difficulties they face. The *gemara* (BT *Ketubbot* 23a) tells of young Jewish women who had been taken captive and came to Nehardea with their captors. The *amora* Samuel struggled with the question of their marriageability, concerned that they might have been defiled by their captors before coming before him. Samuel's father rebuked him for his concern: "Were they your daughters, would you demean them in this way?" Those words should resonate inside the head of every decisor as he considers every question that comes before him: "If she were your daughter …" Everyone knows that a parent will make every effort to help his child, overturning the world if need be.

If decisors appear to disregard people's needs because they are preoccupied with their own "concerns," they contribute thereby to a growing sense of alienation and an ensuing movement away from the world of Torah. The truth of the Torah requires us to permit what can possibly be permitted and not to worry about how extremists, who want to impose all manner of stringencies, will react. Rabbi Kook warns that leaving unneeded prohibitions in place or failing to permit what can be permitted causes a breach between the public and its rabbis—a breach that cannot be healed by speeches or bans. The public will understand that someone who ought to be concerned about its welfare is disregarding it and paying no heed to its pain.

One of my earliest experiences as rabbi of Kibbutz Sa`ad involved the *mehitsah* in the synagogue. My neighbor Gili Zevin wrote an article about the distress felt by a woman praying behind the *mehitsah*; the article was published in *Amudim*, the journal of the religious kibbutz movement. A month later, a response by the rabbi of one of the *kibbutzim* was published. Bearing the title "*Ha-ketza`aqatah* ("Is it as she cries"; the word alludes mockingly to the cry from Sodom that God determines to investigate [Gen. 18:21]), the response patronizingly and disparagingly rejected what Gili had written. I will never forget the harm caused by his words. Not every outcry warrants agreement, but there usually is a duty to consider the pain that causes it.

The *gemara* (BT *Shabbat* 55a) tells of a woman who came to Samuel in distress. He disregarded her, and his student, Rabbi Judah, questioned his doing so. Samuel replied that the responsibility was not his but that of the Exilarch. That would appear to end the story, but another passage (BT *Bava Batra* 10b) cites a tradition about the son of Rabbi Joshua ben Levi (the first generation of *amora'im*), who fell ill, died, and returned to life. His father asked him what he had seen while dead, and the son replied "I saw a world turned upside down, the exalted below and the lowly elevated." Tosafot ad loc. says that the *ge'onim* had an oral tradition, passed from rabbi to rabbi, "that in the upside-down world he had seen Samuel seated [as a student] before Rabbi Judah his

student, who had protested Samuel's conduct." One need not agree with a plea, but one may not close his ears to it.

3. Society Advancing Halakhic Thought: the Attitude toward the Disabled

Let me now turn to the second part of the article, an effort to clarify the influence of modernity on the *halakhah*. An optimistic attitude about the development of the world and of man leads the modern decisor to be attentive to and participate in the process of improvement being undergone by society overall. Not every step taken is praiseworthy, of course, and there are times when society's movement seems more a retreat than an advance. But there also are instances in which the present is a clear improvement over the past, and the decisor in those instances must react positively to the change and interpret the *halakhah* in accord with the new circumstances.

The status of women is a leading case for attentiveness to changing reality.

One of the most prominent new features of today's society is the discovery of "the other." Modern societies strive to include, as comprehensively as possible, those who in the past had been excluded from the social center: the once marginalized woman has become an equal partner in all aspects of society, the person with physical or psychological disabilities has gained equal rights and worth; people with special needs or unique circumstances are sounding their voices and expect to be heard and understood. In all these areas, contemporary adherents of the Torah expect a response from their spiritual leadership. If society in general is undergoing a revolution with respect to the disabled, we must find the light shed by Torah on those very same issues. The Torah does not always clear the way for society. Sometimes, it is social processes that energize adherents of the Torah to find new aspects of Torah—in accord with *halakhah*.

Let me illustrate briefly. Some three hundred fifty years ago, Rabbi Jacob Hagiz considered the halakhic status of the deaf mute, particularly the question of whether the Sabbath might be desecrated to save his life. In his responsum, one can discern the distress of a great man who senses that the mute is possessed of the divine image yet is of uncertain halakhic status; numerous sources treat him as "not a life." His distress led him to pray that the mute not suffer a dangerous illness on the Sabbath, for people might be unwilling to desecrate the Sabbath in order to treat him. Some two hundred years later, Rabbi Israel Meir Kagan of Radin (known as the Hafets Hayyim) read that responsum with surprise: "I don't know what it was that caused the author of *Halakhot qetanot* [that is, Rabbi Hagiz] to have doubts about whether to desecrate [the Sabbath, if needed to treat his illness] or kill [to defend him from murderous attack] on his behalf; and his words are hard to understand." But the Hafets Hayyim needn't have been surprised: during the two centuries that separated his time from that of Rabbi Hagiz, the attitude toward the disabled had undergone a revolutionary change. During the nineteenth century, the abilities of deaf mutes were discovered and schools for them began to be opened. Great Torah scholars, among them Rabbi Hayyim of Sanz, were asked about the status of the deaf in light of these changes, and their rulings effected a total change in their status. Rabbi Esriel Hildesheimer expressly addressed the issue in a responsum to the rabbis of Germany:

> That was the perspective regarding deaf mutes in those times, and it is so stated in medical books of the period. Only later did they change their minds and reach the

11. For Rabbi Hagiz's responsum, see Responsa *Halakhot qetanot*, part 1. For the Hafets Hayyim's reaction, see *Bi'ur halakhah* on sec. 329.

> conclusion that deaf mutes have mental capacity (though it is difficult for them to express it), and that is certainly shown by experience today. And this does not at all contradict the words of our sages of blessed memory, for they were speaking of a mute for whom use of his mental capacity was impossible.[12]

Modern thought demands in no uncertain terms that decisors recognize the transformation in the modern Western world, which acknowledges the light cast by each person simply by reason of being a person. Anyone who deals with these issues sees the change the world has undergone between the Middle Ages and now. The challenge is to reveal the Torah's power with regard to the "other," including those with disabilities. The standing of the human being, created in God's image, has been enhanced in modern times. The responsa written over the past two hundred years show a tension between the desire to preserve the *halakhah* as it existed and the desire to move it forward in view of the changes taking place in society.[13] We find, for example, disagreement over whether a blind person's guide dog may be brought into a synagogue,[14] consideration of whether a mentally disabled boy may be called to the Torah as a *bar mitsvah*, and other questions of that sort.[15] Their common denominator is that anyone who chooses to participate in modern life must leave no stone unturned in seeking ways to integrate the Torah into it.

4. Modernity Moving the Decisor—the Status of Women as a Leading Case for Attentiveness to a Changing Reality

To illustrate both parts of the article—characterization of the modern decisor and modernity as a driver of halakhic decision making—let me consider the most prominent subject in modern halakhic decision making: the change in family structure in the wake of the changed status of woman. When we examine the issues that occupied the attention of modern religious society during the 1960s and 1970s, we find the most prominent questions to involve the attitude toward resident aliens, the attitude toward western culture, and the place of the Sabbath in a Jewish and democratic state. One issue clearly not on the agenda of the time was that of the status of women.[16] During the past two

12. Responsa of Rabbi Esriel Hildesheimer, part 2, sec. 58. In that responsum, he sets forth the change in the attitude toward the deaf of society overall and discusses the difference between those who are willing to recognize a changed reality and those who entrench themselves in the understanding reflected in the Talmud.

13. See, for example, Rabbi Yuval Cherlow, *Be-tsalmo—ha-adam ha-nivra be-tselem* [In His image—Man Created in God's image] (Jerusalem, 2009). In his introduction, Rabbi Cherlow describes the distress he feels because so many bearers of the Torah's banner are misdirected, disregarding the numerous elements of the divine image in man.

14. The dispute between Rabbi Feinstein and Rabbi Breisch regarding the entry into the synagogue of a blind person's guide dog offers an excellent example. Rabbi Feinstein works over the sources in order to prove that it is permitted. Rabbi Breisch challenges his responsum, and in a formal sense, he is right. Rabbi Feinstein's erudite acrobatics created an unstable structure that can be easily toppled. But Rabbi Breisch's responsum gives no recognition at all to the psychological difference to a blind person between leading a guide dog and being led by another person. Rabbi Feinstein shows the motivation to work through the Torah in order to blend it with the needs of society. Rabbi Feinstein's responsum appears in *Iggerot mosheh*, part 1, sec. 45; Rabbi Breishch's responsum is in *Helqat ya`akov, Orah hayyim*, sec. 34.

15. Rabbi Shlomo Aviner, "*She'eilot be-inyanei yeladim im tismonet daun*" [Questions regarding Down's Syndrome Children], *Assiya* 57-58 (1997), pp. 14-16.

16. This finding is supported by a review of the journal *Mehalekhim* of the Movement for Torah Judaism—the founding movement of the Religious Academy in Israel—from 1966 to 1974. See, on that, my article "*Iyyun be-darkah shel ha-tenu`ah le-yahadut shel ha-torah*" [A Study of the Movement for Torah Judaism], in *Sefer zikkaron le-profesor ze'ev falk, zal* [Memorial Volume for Prof. Zev Falk] (Jerusalem, 2005), pp. 371-384. In recent years, we have seen numerous questions related to the family: deferral of pregnancy in the early years of a marriage; mature single women wanting to become pregnant by artificial insemination, homosexuals wanting to be recognized "out of the closet." The diverse reactions to this complex of issues demonstrate the gap between a modern halakhic position and conservative efforts to muzzle the forces said to be seeking to demolish the Jewish home. Here, too, the rabbi has a duty to listen carefully to every question posed to him.

decades, however, that topic became a central, substantive issue one requiring comprehensive rethinking in many areas: the study of Torah, the domestic power structure, women's roles in prayer and public Torah reading, and the role of women as halakhic authorities. These questions flow from an across-the-board change in women's status in society. Only ninety years ago, Rabbi Kook and Rabbi Uziel could disagree on women's suffrage; now, religious women run public and commercial enterprises just as do men, without any difference. In the world of Torah, however, the topic is a flashpoint of disagreement. Whenever a question arises related to a change in women's status, cries of "reform" ring out from halakhic conservatives. Many rabbis see external and alien tendencies, grounded in feminism, in women's demands for a changed position in religious life. But like all halakhic issues, this one, too, has undergone a process of ripening and internalization, and rabbis, like the general public, are becoming more accustomed to change.

As an example, let us consider the question of family planning. Young couples might want to delay having children for any number of reasons: allowing the wife to complete her higher education; a sense of insecurity (personal or economic) during the early stages of a marriage; various personal plans.[17] As much as thirty years ago, Rabbi Aharon Lichtenstein noted the frequency with which the issue was arising: "Almost every halakhic authority, whether [community] rabbi or *Rosh Yeshivah,* who maintains broad contact with young couples about to marry or recently married can attest to the frequency of inquires in this area."[18]

Rabbi Lichtenstein writes of the seriousness and *gravitas* with which the question should be considered, for the questioners are moved not by spiritual languor or flippancy but by great seriousness and a true clash between competing values. The general interest, requiring concern for the nation, comes up against an individual's interests, legitimate on both personal and Torah grounds: continued Torah study, acquiring a trade, professional advancement, psychological tranquility, the ability to provide a suitable education for the children, and so on. If couples dealing with the issue find themselves confronting a solid wall of decisors who rule that nothing can justify deferral of childbearing, the *halakhah* will become insignificant for them and they will stop posing questions to the rabbis. But if they find an attentive and deliberative rabbi, one who studies, exerts himself, and strives to help them, they will build their home responsibly and will seek rabbinic advice on how to conduct themselves in accordance with the halakhic tradition. Over the years, many couples have come to me with questions along these lines. This is not the place to go into my policies regarding this sensitive issue, but I have no doubt that the approach I've outlined—carefully listening to the couple, working through the issue with them, and striving to find a response to their question within the world of *halakhah*—draws more people closer to a life of Torah.

Working through the issue with them and striving to find a response to their question draws people closer to a life of Torah

One of the leading rabbis within the group striving to be attentive to the public is Rabbi Yuval Cherlow, an alumnus of Yeshivat Har Etzion and the head of Yeshivat Petah Tiqvah. He fights fearlessly to provide a hearing for the voices of the distressed; often, they are the

17. On this topic, see also Moshe Kahn's article, "*The Halakhic Parameters of Delaying Procreation*" in this edition of *Meorot*—ed.

18. Rabbi Aharon Lichtenstein, "*Be-fetah ha-sha`ar*" [Introduction], in Rabbi Elyakim Ellinson, ed., *Tikhnun ha-mishpahah u-meni`at heirayon* [Family Planning and Birth Control] (Tel-Aviv, 1977), p. 3.

voices of women who feel that the world of Torah has no response to their problems. To illustrate, let me cite a short passage from his discussion of a request by unmarried women to become mothers through the use of donated sperm. This is a sensitive issue, invoking extremely delicate matters related to the structure and meaning of the family, the dismantling of the family in modern society, and the need to be attentive to an individual's pain. Most decisors to whom the question has been posed have reacted in sweepingly negative terms, concerned about the unraveling of household and family. For example, Meir Halevi writes as follows:

> Among the harms wrought by liberal modernization is our becoming overly technological, rationalist, and careerist. When a woman's career plans call for bearing a child at the age of 35 to 40 as a single mother, it suggests she was unable to form a healthy, solid bond of love and mutual support with a partner. How, then, can that woman think for a moment that she will form a healthy, solid bond with a child? A child who, at least initially, will be extremely egoistic and egocentric, just like every infant? Today there are as well many religious women who very much want to bring children into the world and fulfill their destined role a mother, yet they cannot find their match. What do they do? They go to the Puah Institute [a halakhic fertility clinic] and, turned away, look elsewhere and receive authorization to go to a gentile sperm bank in France or Germany, to avoid the risk of brother-sister *mamzerut* in Israel.*** In this way, a child is born who lacks a father image; the sages of blessed memory referred to him as a *shetuqi*, for when he is asked who his father is, he is silent [*shoteq*]. In such cases, he can always claim his father is a banker, from the sperm bank.[19]

All weaponry may be used, including transforming the permissible into the forbidden.

The writer does not conceal his point of departure: modernity is "a harm." And, in a manner typical of such writers, he distorts the *halakhah*, as I noted at the beginning of this article. The sweeping determination that the child born to this woman would be a *shetuqi* is halakhically wrong, meant to amplify the sense of prohibition and raise the solid wall even higher. Five years ago, Rabbi Ovadia Yosef wrote a responsum about a single woman who bore a son with sperm from a sperm bank; she later became religiously observant and asked that her son be declared fit to marry halakhically. In his responsum, Rabbi Ovadia Yosef reasons that because she was unmarried, most men would have been halakhically permitted to marry her, and the applicable halakhic presumption with respect to uncertainty therefore calls for treating the sperm as having come from a permissible source. The offspring, accordingly, is not to be considered a "*shetuqi*," and had the offspring been a daughter, she would have been eligible even to marry a *kohen*.[20] For the writer of the quoted article, however, *halakhah* does not matter. He has a goal—waging war against the dismantling of the family—and in that war, all weaponry may be used, including transformation of the permissible into the forbidden. To very similar effect is the treatment of the issue by Rabbi David Golinkin, head of the Law Committee of the Masorti Movement in Israel. Writing in 1988, long before the question emerged with its current urgency, Rabbi Golinkin adopting a

***A *mamzer* is a child resulting from a forbidden union, as between brother and sister. Receiving sperm from an anonymous Jewish donor entails a risk that the resulting child might grow up and unknowingly marry a genetic sibling.—*translator's note.*

19. From the "opinion" section of the Arutz 7 website, 24 July 2003.

20. *Responsa Yabi`a omer*, part 10, *Even ha-ezer,* sec. 10. Needless to say, Rabbi Ovadia Yosef did not mean to authorize, as a matter of principle (*le-katehilah*), the use of sperm donation by unmarried women. His responsum dealt only after the fact (*be-diavad*) with a situation that had arisen.

sweepingly negative stance, seeing no opening whatever to a permissive ruling.

In his words: "If we adopt the method of artificially inseminating single women with donated sperm, we will seal the fate of the Jewish family."[21]

In contrast to the foregoing approach, consider Rabbi Cherlow's words:

> When a woman reaches a state in which it is nearly certain that she will be unable to establish a household in Israel even though she very much wants to and is willing to compromise to be able to do so, and, meanwhile, her biological clock is ticking and her chances of successfully bearing a child are diminishing, and she very much wants to have a child—in such a case, halakhic decisors face an extremely weighty question and they are divided on it. Some say that the woman should not treat her desire to bear a child as counterbalancing the importance of the sanctity of the Jewish family and the interest of the child in being born into a family with both father and mother; and they see no way to authorize such action [that is, artificial insemination with donated sperm]. Moreover, there is a general public interest to be taken into account, namely the desire to avoid the slippery slope toward single parenthood at ever earlier ages and a situation in which bearing a child in the absence of a husband becomes a normative or even ideal possibility. Public enactments to promote the sanctity of the family in Israel sometimes foreclose satisfying a person's individual desire. On the other hand, some decisors take the view that, upon reaching the age where one's chances of becoming a parent are about to run out, and when we are speaking of someone who has been unable to marry despite doing all she could to try, it would not be right to prevent her for halakhic reasons from fulfilling her hope to have a child. That is so because the Torah itself describes a childless woman as feeling that her life is not a life ("Give me children or I die," cries Rachel to Jacob) and the *midrash* notes that Jacob hurt Rachel with his untoward and impatient response; it is so because there is no express prohibition on a woman bearing a child without a family structure; it is so because of the fact that we must not go into the business of issuing "licenses to become pregnant," which is the way of the world that precedes the Torah and an essential aspect of human existence; and it is so because of the fact that, at times, a mother who bears one child of her own even without a father will raise that child with greater warmth and love than would be the case in a shaky family that continues to bear children.[22]

I chose this example because it reveals the halakhist's ability to listen to people and share their pain. Here, too, I want to avoid going into the ruling itself. Everyone understands that Rabbi Cherlow is working within the halakhic field but choosing a way through it that draws people to the Torah rather than pushing them outside the gate. He sees the danger of the "slippery slope" not only in connection with the dismantling of the family but also in raising the wall of prohibition and closing one's ears to the distress of these women.

5. The "Power of Leniency" and the Duty to all of Israel: The Controversy over "*Kosharot*"

Let me conclude this discussion of modern halakhic decision making with an issue that is

21. *Teshuvot va`ad ha-halakhah shel kenesset ha-rabbanim be-yisra'el* [Responsa of the Law Committee of the Rabbinical Assembly in Israel] vol. 3 (1988-1989), pp. 83-92.
22. From the website of Yeshivat Petah Tiqvah.

of interest beyond the modern community and touches on the life of anyone who feels some responsibility for all of Israel and does not live a sectarian life. Many rabbis in the *Haredi* community see themselves as "sacred guardians," standing on watch against any infiltration of external winds into the world of Torah-observant Judaism. They share the mindset of the passengers on Noah's Ark, striving to save themselves from the waters of corruption surging around them throughout the entire world. All their energy is concentrated on the effort to preserve and develop their minority group; the world beyond is a threat but otherwise of no concern. The ethos of religious Zionism was, for many years, just the opposite. Armed with great faith, the people of Bnei Akiva fostered the idea of being fully integrated into all aspects of public life—culture, education, security, and industry. If *Haredi* Judaism can be compared to the passengers on Noah's Ark, Religious Zionism adopted the image of "the children of Abraham our father," acting with a sense of "Go forth" (*lekh lekhah*, God's charge to Abraham) to spread the great light of Torah as it reveals itself in all fields of life. One area that stands out here is that of the *kashrut* of food.

The *Haredi* approach to *kashrut* attempts to meet the private needs of small groups by establishing an array of *kashrut* supervision agencies organized along sectarian lines. The Chief Rabbinate, in contrast, drew a line that could encompass the largest possible number of producers and consumers; to do so, they chose a policy of ruling leniently rather than stringently. For example, when Rabbi Amar, later the Chief Rabbi, was serving as Rabbi of Tel-Aviv, he wanted to implement the *kashrut* standards of the *Beit Yosef*, which required continuous supervision of work performed by gentiles. But it quickly became clear to him that requiring every business owner to maintain continuous supervision by a Jew would do more harm than good. Many business owners willing to be certified as kosher under a regular supervisory system would forgo *kashrut* altogether rather than meet the *Beit Yosef* standard. In consultation with his teacher and mentor, Rabbi Ovadia Yosef, Rabbi Amar decided to leave in place the existing distinction between regular *kashrut*, which applies the Rama's standards and requires only that the cooking fire be lit by a Jew, and "*mehadrin*" *kashrut,* which applies, among other stringencies, that of the *Beit Yosef* with respect to supervising gentile workers.[23] Nevertheless, as part of the *Haredi* tendencies now characterizing some streams within Religious Zionism, an organization called "*Kosharot*" was formed and took the unprecedented step of issuing a report questioning the entire *kashrut* system in Jerusalem, hoping thereby to bolster *kashrut* and transform it into "*mehadrin*." I see this as an example of the revolution taking place within Religious Zionism, which began as

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If Haredi Judaism is compared to the passengers on Noah's Ark, Religious Zionism is "the children of Abraham."

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an effort to undertake a duty to all Israel but now, in a process of supposed "spiritual strengthening" is becoming like one of the religious courts in the *Haredi* street.

The process can be seen as well in the context of *shemittah*, (the agricultural sabbatical year, when, to state the matter in very general terms, land owned by Jews in the Land of Israel may not be cultivated and other restrictions apply). Since the early days of Zionism, the restrictions that apply during the *shemittah* year and the demands of modern agriculture have been reconciled by a sale of land to a non-Jew (a process termed *heter mekhirah*). Recently though, voices from within Religious Zionism have called for "enhanced *shemittah* observance" and have undercut *heter mekhirah*. The result, however, is an overall debasement of the sanctity of produce that grows during the *shemittah* year, for produce is sold in the

normal way with only a small packaging notation that the product is subject to *shemittah*-sanctity (see, for example, the wines produced by Carmel Mizrahi). Thousands of innocent Jews who are unaware of the product's *shemittah*-sanctity casually violate the prohibition, a transgression that could have been avoided through the use of *heter mekhirah*.

Religious Zionism is becoming like the religious courts on the Haredi street.

Zionist halakhic decision making should be guided by recognition of a duty to the public at large and responsiveness to the needs of the majority. It should not be guided by an effort to satisfy the will of marginal groups.

6. Modern Rabbinic Leadership

Many in the Religious Zionist camp, in cities and settlements alike, identify with the principles of the modern stream of Torah-observant Jews and genuinely hope to see our spiritual renewal; they conduct their personal and family lives in accord with those ideas. But they are often perplexed when their children come home from our religious educational institutions spouting a new "Torah"—one that rejects culture, promotes alienation from the values on which their homes are grounded, and warns of the dangers inherent in the openness that characterizes those homes. A spiritual wedge is driven between the communities and a segment of the educational system. The public that identifies in its way of life with the ideas I have described does not forcefully demand spiritual leadership suited to its way of life.

Still, there is hope. A new generation of spiritual leaders is emerging. Some of them are open to modern culture, drawing on it and internalizing its positive aspects within their spiritual world. Aggressive opposition to anything that smacks of the academy has become a minority position within the Zionist spiritual leadership. More and more yeshivas are introducing their teachers to the fruits of academic research, and the cross-cultural encounter is producing an enriched world of Torah. That leadership is slowly making its way into the public marketplace, and the world is coming to know a different kind of rabbinate: one that is connected to and integrated with the experience of life and culture in their entirety. These encounters, may they increase, will bolster the standing of the rabbis in the eyes of their communities and the standing of Torah in practical, day-to-day life.

7. Concluding Note: Invalidating the Culture of Invalidation

Some time ago I officiated at a wedding at an auditorium in the central part of Israel. It was a regular Israeli wedding, that of a secular couple who wanted to be tied to their ancestral tradition and chose to be married according to the Law of Moses and Israel. They made no special requests and sought no innovations; they did not suggest that the bride give the groom a ring or that women recite the seven blessings. The ceremony was simple and fully traditional. On my way to my car after the ceremony I was stopped by a man who approached me cautiously:

> "Rabbi, may I ask you a question? Was that a Reform ceremony?"
>
> "Why do you ask? It was an entirely ordinary ceremony," I replied.
>
> "But I understood everything that was said there; you spoke Israeli," he answered.

Much can be learned from this dialogue, but what I want to do here is call attention to the tragedy that has befallen religious Judaism. To be "Orthodox" in the eyes of that secular Israeli Jew, one must be incomprehensible, irrelevant, uncongenial. An "Orthodox" Jew is expected to maintain, in thought, dress, language, and conduct, the "original" Judaism—not a Judaism that speaks Israeli

Hebrew and is up-to-date in its involvement with practical life but a Judaism that preserves European synagogue life, the melodies of grandpa's house, the appearance of the *shtetl*. That is Judaism.

Religious Zionism has long been a presence in all aspects of Israeli life, but it is not perceived as "the real thing." All of us know the humorous line we have heard countless times—"the religious are thus and such … but you're different." *Haredi* Judaism, for its part, does all it can to reinforce that image. The stigma and the reality are nicely connected.

Halakhic decision-making should be guided by a duty to the public at large and responsiveness to the needs of the majority.

Haredi Judaism was openly hostile to Religious Zionism, seeing it as a threat to the existence of Torah. Every innovation was cast as "reform." The existence of various streams within the nationalist-religious movement was of no interest to the *Haredi* leadership; the nationalist identity itself invalidates their standing. An example of the *Haredi* failure to distinguish between streams within Religious Zionism is provided by the attitude of *Haredi* rabbis to the campaign to go up to the Temple Mount—a campaign led by the rabbis of "Yesha" (an acronym for Yehudah-Shomron-Azza, that is, the West Bank and Gaza). Within the nationalist-religious camp, these rabbis are classed as a group especially punctilious in its religious observance.

Nevertheless, Rabbi Ovadia Yosef reacted in the following terms to publication of their ascent to the Temple Mount:

> … These rabbis of Yesha who publicized this effort, do they want to be reformers? Let them say that is what they want. It is a stumbling block for the masses. We commit enough sins; do we need to add to Israel's sins? There was some wise man some seventy years ago (evidently reincarnated in the Yesha rabbis) who wanted to permit entry into the Temple Mount. The *ga'on* Rabbi Yosef Yedid wanted to ban him for that until the matter was suppressed, and the Land quieted down ….[24]

This, of course, is but one instance of an overall program of invalidation. One could cite others—the invalidation of Rabbi Druckman in the *Haredi* press by its refusal to refer to him as "Rabbi," the struggle against the appointment of Rabbi Ariel to the Chief Rabbinate, and many more. Were the trend confined to relations between the *Haredi* movement and the Religious-Zionist movement, there would be less need to speak out. But I am writing here of internal invalidation within the Religious-Zionist camp. That sort of invalidation has never drawn anyone closer to the world of Torah, has never curtailed assimilation, has never prevented groundless hatred; it is simply the introduction of "alien fire." We may demand forcefully that this corrosive trend be halted and that we develop among us a culture in which parties to disputes permit each other to sanctify their Creator, in a spirit of calm.

24. Discourse for *Shabbat Mattot-Mas`ei*, 1997, p. 21.

Meorot
A Forum of Modern Orthodox Discourse

Rabbi, Make a Fence for Yourself

Rael Strous

Biography: Rael Strous is a psychiatrist who completed his training at the Albert Einstein College of Medicine, Massachusetts Mental Health Center and Harvard Medical School. He serves as the Director of the Chronic Inpatient Unit at the Beer Yaakov Mental Health Center and as Program Director of the New York State/American Program at the Sackler Faculty of Medicine, Tel Aviv University

Abstract: The power of a rabbi has associated pitfalls. The danger inherent in his powerful relationship with those he serves comes from a lack of appreciation of boundaries, an often overlooked aspect of rabbinic training. Several recent high profile cases highlight the critical importance of respecting boundaries, which ensure that professional and personal identities remain distinct and allow safe interaction. Boundary violations damage the safety of the interaction between rabbi, teacher, youth leader and congregant/student. The risk of boundary violations is associated with a characteristic personality make-up in the rabbi and the congregant/student. Boundary violations can be prevented with responsible measures, including safety mechanisms inherent in halakhah prior to any damage being wrought. Ultimately, education and training are the mainstays of ensuring that small problems do not become major ones.

Meorot 8
Tishrei 5771
© 2010

A Publication of
Yeshivat Chovevei Torah
Rabbinical School

Rabbi, Make a Fence for Yourself

Rael Strous

Introduction

The rabbinate is a noble profession and the rabbi's role may encompass every stage of an individual's life from the "cradle to the grave." Some rabbis choose to focus on their role as educators, some as leaders and others as counselors. Above all, a rabbi wields great influence and phenomenal power that can be of assistance to the congregant, student, client etc. Like all power, however, rabbinic power comes with danger. The danger inherent in such powerful and uneven relationships comes from a lack of respect for boundaries. Unfortunately this is usually an overlooked aspect of rabbinic training where, quite justifiably, the emphasis is placed upon scholarship, deep understanding of the classical texts and commentators, and, most importantly, practical *halakhah*.

Several recent high profile cases have highlighted the critical importance and value of respecting boundaries at all stages in the rabbi-congregant/student relationship. This has become all the more vital given the changing role of the rabbi in many contexts whereby he is called to attend to issues over and above the traditionally halakhic consultation role rabbis have played through the generations. Often the problem begins with the fact that the student or congregant shares his or her deepest secrets and feelings with the rabbi. Several examples of boundary violations leading to sexual misconduct and other misdemeanors by rabbis could be given, but providing case illustrations is not pertinent because the issues are universal and timeless. The context is not as important as the values they present for the rabbinic profession in preventing serious affronts to the profession, with often with innocent, albeit misguided, beginnings. Most importantly, such behavior breaches core values of Judaism and needs to be prevented[1]

In this brief description of the phenomenon, my intent is to visit and define the concept of boundary violations, describe situations in which they are most likely to occur and explore the particular dangers of boundary violations and its most egregious consequences. I also portray the nature of the rabbi congregant/ student, and/or relationship that is most at risk for boundary violations. Finally, I present some recommendations aimed to prevent the occurrence.

It is important that boundaries be clarified at the outset of the interaction

What are Boundary Violations?

While the precise nature of boundaries may be difficult to characterize, Sarkar[2] defines the term as one that refers to the distinction between professional and personal identity. Rather than being an obstacle to contact, they permit and foster safe interaction between individuals. Boundaries determine the limits of professional identity and roles, demarcating the framework of interpersonal encounters between a professional and a layperson. Boundaries come

1. Friedman M., "Crossing the line. What Makes a Rabbi Violate Sexual Boundaries – And What Can be Done about It?" *Tempest in the Temple Jewish Communities and Child Sex Scandals,* Amy Neustein, ed. (Brandeis University Press/University Press of New England 2009).
2. Sarkar S.P. "Boundary violation and sexual exploitation in psychiatry and psychotherapy: a review," *Advances in Psychiatric Treatment*, 2004;10, 312 -320.

to maintain the safety of both parties. Their violations thus reflect an affront to the safety of the interaction between rabbi, educator or youth leader and congregant/student and can be a significantly damaging phenomenon. It is important that boundaries be clarified at the outset of the interaction, implicitly and at times even explicitly if the need arises, and that it be clear that there is an "agreement" that the relationship will be a purely professional one.

Boundary violations can involve a spectrum of activities, ranging in frequency and extent of damage. In the mental health care field, it has been suggested that a distinction can be made between boundary violations (causing harm) and boundary crossings (which do not *yet* cause harm but are a diversion from usual and accepted interaction/behavior).[3] A series of boundary crossings can develop into boundary violations, however, and therefore this distinction remains controversial but important. If a rabbi's role is to facilitate or foster spiritual or other growth, then a focus on this objective should be maintained at all times with no diversion from that goal in order to expand the relationship and interaction into areas inappropriate to this purpose.

When do Boundary Violations Occur?

Boundary violations take place in any relationship when one individual who has some power over another (employer, leader, teacher, officer, supervisor) crosses and breaches boundaries, be they physical or emotional. Boundary violations may begin quite innocently with a cumulative effect of "boundary crossings," even without one or both parties realizing it. While such violations usually begin with the rabbi's genuine desire to assist the congregant or student in distress, they often end in disaster to both parties as well as their respective families. It is precisely this factor that makes the problem such a dangerous one, and one that very easily can destroy careers, families and emotional stability of the parties involved. Examples of boundaries being overstepped at an early stage may include meeting a student/congregant alone in one's office behind closed doors at a time when no one is around and meeting the congregant/student at a venue other than one's office, especially at night. Such boundary violations may extend to the use of first names rather than "rabbi" or even a gentle touch as a sign of comfort or empathy when the individual is coming for help. The problem becomes most acute when the congregant is in the midst of crisis and thus very vulnerable. It is particularly in such a scenario that preserving boundaries is essential, since this is the time when the congregant is most likely to become weakened and the interaction is primed for subsequent problems.

A major dynamic of boundary violations is the belief that one is "above the rules."

Under such conditions, the rabbi must be particularly wary of the absolute necessity to maintain boundaries at all times, since misinterpretation is an ever present possibility if boundaries are not made absolutely clear. This is a clear fiduciary responsibility. Often a major dynamic in the phenomenon of boundary violations is the belief that one is "above the rules." While accusations may be unfounded, when boundaries are maintained damage in most cases can be averted even with the most litigious and provocative individual. Thus boundary preservation combined with mutual respect and trust help maintain the rabbi-congregant relationship as a safe and sacred interaction. As a first step, the rabbi must recognize and respect the "profound power differential" involved in the interaction.[3]

3. Gutheil T.G. & Gabbard GO, "The concept of boundaries in clinical practice: theoretical and risk-management dimensions," *American Journal of Psychiatry,* 1993; 150:188-96.
4. Garfinkel P.E. & Dorian B, Sadavoy J, Bagby RM. "Boundary violations and departments of psychiatry," *Canadian Journal of Psychiatry,* 1997; 42, 764-70.

Certain actions are certainly forbidden and destructive, but others are less clear and require careful consideration if the rabbinic profession is to arrive at a consensus of what is and what is not permitted. A similar mode of discussion has existed for years in the professions of psychology and psychiatry and it has had to confront frequent and severe infringements of boundaries amongst its practitioners.[4] The importance of firm and uncompromising boundaries now comprise one of the first and most important skills taught to students of the psychology and psychiatry professions. Boundaries provide safety and allow the necessary "work" between two individuals (rabbi and congregant/student) to take place. With the maintenance of these critical limits, each does not have to waste valuable emotional energy trying to feel safe. It becomes a given and therefore respected. Although boundary violations are most egregious and most known in the area of sexual conduct, they also exist in other areas such as social and business contact; and while the latter violations may appear less serious, they can become as damaging as the former. Here is an example: Because the rabbi may serve as an idealized power to the congregant, the congregant may be more inclined to give various benefits or be at risk to be exploited in business without even realizing the process is taking place.

Dangers Inherent in Boundary Violations

While *halakhah* firmly prohibits any sexual interaction between a rabbi, educator, youth leader and congregant/student, despite the intention of the rabbi to avoid and untoward interaction with whom he is serving, a female "follower" of the rabbi may develop an infatuation with him. What is important to the follower is the meaning to her of the rabbi's behavior, not his intent.[2] Moreover, the rabbi is human and his approaches can satisfy some of his unrecognized narcissistic needs for respect and admiration, so he may succumb to inappropriate advances by the woman or even inadvertently encourage such boundary crossings. This is the best-case scenario, in an unacceptable situation.

At worst, fully cognizant of his inherent power in the relatively one-sided relationship, the rabbi may encourage the deterioration of the relationship into overt sexual misconduct and exploit the weakness of the congregant/student. In this case, the rabbi may be having personal difficulties in his professional life or in relationships with a partner close to him. This might even extend to difficulties and considerable stress that the rabbi may be undergoing with his congregation at large, and any unexpected support or defense from a female member in the community may lead to loosening of the boundaries with inevitable consequences. The rabbi might also exploit the vulnerability of the congregant/student who may be emotionally unstable as a result of any problems she may be experiencing. This latter case scenario applies even to a consensual relationship with a congregant or student, which would also be forbidden due to the inherent imbalance of power in the interaction. Either way, the results are catastrophic to both partners. The only way to prevent such deterioration is to maintain absolute and firm boundaries at all times between the two.

What is important is the meaning to her of the rabbi's behavior, not his intent.

Furthermore, there exist certain personality subtypes who may come to the attention of a rabbi in the course of managing relationship conflicts. Impulsive behavior and erratic interpersonal interaction may be prominent manifestations of these traits on the part of the female congregant. The rabbi needs to be aware of the sexually provocative nature of behavior that may transpire and the dangers of being "seduced" by "interesting and exciting" members of their community whom they may feel the need or desire to "save" and "rescue"

from a difficult situation. Many marriages and relationships have been destroyed by individuals of this nature, who rapidly idealize and devaluate respected leadership figures such as their rabbi.

Sexual Misconduct by Rabbis

The most damaging result of not enforcing boundaries is clergy sexual misconduct. The extent of rabbinic sexual misconduct is unknown; yet while probably uncommon, it is most likely underreported. While it cannot be always precisely defined, if present it may range from what appears to be harmless and innocent to more obvious indiscretion, including inappropriate touch, sexual harassment and even adulterous relationships. It always reflects abuse of power.

Not all incidents of sexual misconduct related to the clergy are associated initially with boundary violations. Although rarer, some incidents involve rabbis who are psychopathic or suffer from various paraphilias. However many are associated with boundary crossings or infringements, and it is these situations that are most preventable. Since several modes of interaction remain unclear in the interaction between two people of what is appropriate and what is not, the exact extent of the problem remains unclear.

Some of this may be explained by "grey areas" that exist in such relationships, since what may be comfortable to one may be considered unacceptable to another. It also may depend on age and stress levels of the individual and, most importantly, needs for emotional care and support at various times in the individual's life.

The extent of rabbinic sexual misconduct is unknown, but it is likely under-reported

Many, if not most, instances of sexual misconduct resulting from boundary violations go unchecked and unreported. The problems mostly arise during a period of emotional insecurity in the life of a female student or congregant. Here, often without the overt knowledge of both parties, boundaries ease and the slippery slope into sexual misconduct begins.[5] Many processes are occurring at the psychodynamic level during such an interaction, much of which is reflected in the rabbi's misinterpretation of the congregant's desire for maternal nurturance as sexual overtures and the rabbi's enactments of rescue fantasy. The female "congregant in distress" admires the rabbi and strokes his ego. He in turn fosters this devotion in order to boost his tenuous self-image and becomes all too eager to rescue. This leads to inevitable boundary violations and spiraling disaster.

It has been reported that the rate of sexual boundary violations is higher among the clergy than any other helping profession. While the reasons for this are numerous, arguably the most important factor accounting for the phenomenon is lack of education and training, particularly in knowing how to prevent such problems by means of strict initial boundary setting in any interaction between the two parties.[6]

5. Simon R.I, "Therapist-patient sex. From boundary violations to sexual misconduct," *Psychiatric Clinics of North America,* 1999; 22:31-47.
6. Blanchard G.T., "Sexually abusive clergymen: A conceptual framework for intervention and recovery," *Pastoral Psychology*, 1991;39, 237-245.

Can a Rabbi-Congregant Relationship ever be Consensual?

The question remains: What if the interaction between the rabbi and congregant is consensual? While it may appear that such a relationship is consensual, there is an inevitable imbalance in the power equilibrium that exposes at least one party in the relationship (usually the congregant/student) to exploitation by the other (usually the rabbi). Under such circumstances, it would be difficult to determine whose needs are primary in the interaction[7]: Is it the rabbi's need for the relationship or is it the congregant finding comfort in the warm-hearted interaction? For this reason, romantic involvement needs to remain off limits and categorized as boundary violation with ethical implications of the highest severity. This certainly would apply while the rabbi serves as the congregant's mentor/spiritual leader/confidant/ halakhic authority. Maintenance of the boundary is advisable even after the rabbi/congregant relationship has ended, as when one or the other has moved to another area or has graduated. Once an interaction has been set with inevitable power imbalances, these structures remain deeply ingrained with vestiges remaining long after parties have moved on. The power imbalances remain and may one day "blind" one or more of the parties leading to damaging consequences to existing new family relationships that either has built. Violations of such boundaries at this later stage also transgress the ethical underpinnings of a noble profession.

A strong precedent for such ethical practice exists in other professions such as the army, education, and, most prominently, in the fields of psychology and psychiatry. The published standards of conduct of the American Psychiatric Association, which serves as an model of ethical standards for world psychiatry, states explicitly that sexual activity with a current or former patient is unethical and, in 1993, the organization adopted a position that sexual contact between a psychiatrist and former patient was prohibited, with no time limit specified.[8] The undue influence operating in these situations inevitably lead to the impaired capacity of former patients to give or withhold consent to certain interactions and even transactions.[9] In a similar manner, this would easily find expression in the relationship between a current and even former rabbi and his congregant/student.

Who is the Rabbi Most at Risk?

While it is impossible and unfair to characterize all individuals at risk for boundary violations in any inclusive manner, certain features predisposing to such behavior are evident. For an appropriate and healthy relationship with a congregant or student to thrive, it is essential that trust, reliability, and a commitment to the congregant's needs and well-being be present. A rabbi with issues of impaired impulse control and exaggerated views of his own "specialness" is therefore most at risk for failure to maintain the sacred boundaries of the profession. These characterological weaknesses together with excessive needs for affirmation or unacknowledged longings for care and nurturance place the rabbi at considerable risk of succumbing to intimate enticements of the relationship.

In addition, such a rabbi would be more inclined to abuse his power in the uneven relationship that exists between himself and

7. Bleiberg J.R. & Skufca L. "Clergy Dual Relationships, Boundaries, and Attachment," *Pastoral Psychology* 2005;54, 3-22.
8. American Psychiatric Association: The Principles of Medical Ethics with Annotations Especially Applicable to Psychiatry, (Washington, DC, APA, 2001).
9. Malmquist C.P., Notman M.T., "Psychiatrist-patient boundary issues following treatment termination," *American Journal of Psychiatry* 2001;158, 1010-8.

the female student or congregant. This is especially true when weakness is evident due to a challenging event in her life such as pending divorce, upcoming conversion, abandonment by spouse etc.

Preventing Boundary Crossings and Violations

As has happened in the psychiatry profession, the rabbinic equivalent of professional standards committees, however constituted, is obligated to respond to professional boundary transgressions and to develop a consensus regarding the parameters of professional conduct in these areas for rabbis. As is true for psychiatrists—perhaps even more so given the nature of the profession—the ability of rabbis to serve as effective role models for their congregants would be nullified by any failure to address incidents of boundary infringements.

The rabbi with impaired impulse control and exaggerated views of his own "specialness" is most at risk

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Although sexual contact represents the most extreme and publicized form of boundary violation, nonsexual forms of exploitation involving finances and confidentiality are also relevant. These factors need to be made explicit and discussed during initial and ongoing training of rabbis and religious educators. It is therefore critically important for yeshivot that train rabbinic students to devote time and effort to this aspect of every future rabbi's development. While a few seminaries in fact invest energy in this area of training—Yeshiva University's Caroline and Joseph S. Gruss Institute in Jerusalem and Yeshivat Chovevei Torah in Manhattan are two—it is unfortunately rare for other rabbinical seminaries to do so. Change is urgently needed.

When boundary violations do take place and they become known to community leaders, be they rabbinic or lay, the issues need to be dealt with responsibly and in a timely fashion despite the often knee-jerk reflex of such bodies to deny or ignore the event and act as if it never occurred or that it does not warrant further attention.

Preventative Measures and Guidelines for Practical Boundaries

There are many dangers inherent in legitimate private consultation or counseling sessions between a rabbi and a susceptible congregant or student, which can lead to possible misinterpretations and/or boundary violations. It is therefore a question not of whether it will occur but rather of how often. An environment of "safety and predictability" needs to be engendered in all interactions. On

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It is a question not of whether it will occur, but of how often.

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a practical level, certain steps should be taken and instituted by the rabbis in order to prevent destructive boundary violations. They include the following, among others:

1. The necessity of boundaries and importance thereof must be verbalized and made clear to the congregant and/or student.
2. Rabbis must not meet with congregants or students outside of the professionally accepted or designated place e.g. office, classroom, beit ha-midrash. Even an innocent pre-set meeting in a coffee shop or restaurant can lead to problems. Meeting with a vulnerable individual (as is often the case) in a non-office environment can blur the boundaries unnecessarily. If meeting a member of the opposite gender at one's home, care should be taken that a member of the congregant's gender is also present in the house at the time (preferably the rabbi's spouse, if he has one).

3. It is inadvisable to meet alone where there is no possibility of being disturbed. Prevent total privacy. This mirrors the halakhic laws of *yihud,* a restriction one might easily want to waive in "extenuating circumstances," but often most needed for the vulnerable student, congregant and/or rabbi who also is experiencing personal crises and thus is at risk. The laws of *yihud*, based on inherent human frailties, acknowledge that there are certain desires that people will yield to in various situations. Interestingly, just as *halakhah* succeeds in preventing submission to difficult-to-control habits under various circumstances (e.g. smoking on Shabbat for the compulsive smoker), so too will *halakhah* succeed in preventing boundary violations and misconduct of the sort under discussion if laws of *yihud* are strictly adhered to. Thus, for example, the door to the rabbi's office should remain open unless there is a specific request to close it, in which case there should be appropriate additional safeguards, including an unlocked door, a secretary in an adjoining room and the option for the rabbi's assistant to enter at any time. The door might also be closed if there are windows guaranteeing the possibility of "eye contact access" by those outside the room. Other staff in the office should readily have access to the room. Furthermore, it is inadvisable to drive the congregant home.

4. Rabbis should master the challenging but critically important skill of "empathic detachment". "I am present for you, but only within the context and boundaries of my position as a rabbi and nothing else."

5. Rabbis must beware of excessive self-disclosure by the rabbi. For a rabbi to counsel and guide a congregant or student, it is not necessary for him to discuss his personal issues or details even as example of "successful" dealings with challenges or adversity.

6. Rabbis must beware of treating students or congregants as confidants, especially if they are of the opposite gender.

7. Dating previous congregants is not allowed.

8. Rabbis must beware of using one's position as rabbi to obtain benefits (financial, business, services) from congregants/students for oneself, one's family or even one's friends.

9. Rabbis should maintain set times for interactions and limit time for counseling sessions. They should not allow excessive contact via other media such as "sms" or email. This may also become a form of boundary violation unless the interaction is kept strictly professional and businesslike, a difficult task to maintain over time.

10. Times must be set to receive various individuals (e.g. *tsedaqah* collectors) in their quest to obtain your blessing and approval. This also a boundary issue. Stick to these times; otherwise the boundary violation will come to disturb and haunt both the rabbi and his family's privacy and peace.

11. No matter how vulnerable and sensitive the congregant or student is, the absolute boundary of no physical contact must be preserved, even at the expense of the rabbi being accused of being cold and detached.

General Preventative Measures

Since the boundaries guard and preserve the integrity of the rabbi-congregant/student relationship, it becomes the senior partner's (the rabbi's) responsibility and duty to institute appropriate boundaries. Even when the boundaries are challenged, the rabbi must uphold the ethical standards of the profession and maintain them. Knowledge of boundary issues and how to take practical steps to

preserve them does not come naturally. Hence the rabbi must invest in necessary training. National rabbinical organizational structures should require such training prior to ordination and hiring.

Community structures, batei din etc. need to institute a complaint infrastructure enabling such infringements of boundaries to be reported and responsibly attended to at an early stage before damage becomes entrenched. This must include appropriate censure and disciplinary action when necessary. This factor is important since often in dealing with the issues, the problem is not limited to the rabbi, but to the response of the community as well. The conduct of the rabbi who oversteps boundaries leading him down the path to sexual misconduct should not be rationalized. It should be dealt with immediately and effectively by the community and its disciplinary structures. While the Rabbinical Council of America (RCA) in 2004 instituted a thorough, impartial and far-reaching protocol for dealing with allegations of sexual misconduct against its members, many countries around the world still lack such a manner of dealing with improprieties and boundary violations of rabbis. The RCA protocol calls for an immediate response to allegations, irrespective of source, with thorough investigation and resolution of all accusations, while protecting innocent parties against groundless allegations. If after full investigation the allegations are deemed to be credible, a variety of responses can be recommended to, and implemented by, the RCA, including expulsion from the organization, and notification of colleagues, employers, and general public, if considered necessary to prevent potential harm to others (RCA Convention Resolutions '04, RCA Resolution on Allegations of Sexual Impropriety, June 15, 2004).

Rabbis should have available the option of consulting with well-trained and experienced mental health practitioners who would assist in dealing with the challenging or difficult "follower" who may be taxing the strict boundaries set by the diligent rabbi. As in mental-health care, where the fundamental of "supervision" is entrenched the community should likewise offer, or the rabbi should insist on, an analogous resource for himself. Education and prevention is demanded. Erotic feelings towards members of the opposite gender may be a normal reaction, but how one acts on them is what becomes critical and determining. When the rabbi feels that boundaries are being overly challenged by the congregant and that he is not able to deal with such challenges, referring out for help is not a sign of weakness or failure.

Conclusion

The concept of rabbinic boundaries is an unusually complicated concern. This phenomenon is compounded by the fact that, unlike the other helping professions, religious leaders do not have any firm code of ethics prohibiting multifaceted relationships between themselves and their congregants or students. While the consequences of boundary crossings and subsequent boundary violations are most damaging to the rabbi's follower, they may become damaging as well to the rabbi, to himself in terms of self-worth, as well as to his family to whom revelations of misconduct resulting from boundary violations are often devastating.

Over time, the value and importance of boundary maintenance will come to be respected by the congregants/student and accepted as normal. The aim is to foster awareness in order that preventable occupational hazards do not become a surreptitious trap in the career of many

promising rabbinic figures. The RCA clearly requires that "each member [be] committed to conducting himself according to the highest standards of halakhah and morality in all aspects of his professional and personal life" (RCA Resolution on Allegations of Sexual Impropriety, June 15, 2004).

While in many ways this should be taken for granted, appropriate safeguards of "boundaries" need to be instituted to ensure that this is an absolute given. As we have seen so often recently, the damage done to the community following a widely publicized case of rabbinic boundary violations spiraling out of control is inestimable. It can be prevented. It must be prevented.

Meorot
A Forum of Modern Orthodox Discourse

Conceptual and Logical Problems Arising from Defining Life and Death by the Presence or Absence of Circulation

Noam Stadlan

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Abstract: The accepted halakhic definition of death prior to the modern era of medicine was that death occurred with the cessation of circulation and respiration. Many *poseqim* across the Orthodox spectrum believe that definition remains valid, including Rabbis Herschel Schachter and J. David Bleich. This paper claims that their definitions suffer from a lack of precision, contradict Rabbi Bleich's definition of life in his paper on conjoined twins, and lead to inchoate results when applied to modern medical achievements. These results include: if a body is divided into parts, each individual part is considered alive; a mechanical pump can fulfill the necessary criterion for life (therefore any piece of tissue attached to such a pump will live forever, or as long as the pump works); and a heart or liver donor is still alive as long as the organ is functioning in the body of the recipient. These outcomes result from viewing the body as a completely interdependent whole, and are inevitable unless a specific irreplaceable anatomic basis for the presence of life, such as the brain, is identified.

Meorot 8
Tishrei 5771
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A Publication of
Yeshivat Chovevei Torah
Rabbinical School

Conceptual and Logical Problems Arising from Defining Life and Death by the Presence or Absence of Circulation[1]

Noam Stadlan

Death by neurological criteria—commonly referred to as "brain death,"—has been criticized many times in the halakhic literature. The alternative definition describes death as the cessation of circulation and respiration.[2] As one author put it, "the overwhelming consensus of authoritative rabbinic opinion is that, for all legal and moral purposes, death occurs only upon cessation of both cardiac and respiratory function."[3] This definition was established in the pre-modern era of medicine and is usually viewed as the traditional one.[4] Two of the most prominent *poseqim* in America, Rabbis Herschel Schachter and J. David Bleich have published their opinions on the halakhic definition of death. Both oppose using the irreversible cessation of brain function as a criterion for death and each has offered criteria for determining death based on the pre-modern model. Yet these positions, offered by modern[5] authorities and taking into account advances in modern medicine, suffer from three interrelated problems: (1) lack of precision, (2) incompatibility with an established halakhic definition of life, and (3) a tendency towards incoherent results when applied to unusual situations. An analysis reveals that the underlying issues are a lack of consideration of the anatomic basis for life, and the failure to consider all the implications of the definition.

Rabbi Schachter gives two definitions of death.[6] The first is "our halachic legal system defines a living person as one whose blood is circulating.[7] Apparently, cessation of blood

1. I would like to thank the anonymous reviewers and all the family and friends that critiqued and contributed to this paper. I am particularly indebted to my wife, Ms. Marianne Novak, my parents, Dr. Emanuel and Mrs. Vivian Stadlan, and my father in law, Rabbi David Novak. Any errors in fact or logic are my own.

2. Many excellent reviews have been written on the history of the definition of death and the opinions of poseqim(do you want to change the spelling here?) throughout the generations. See for example Rabbi Avraham Steinberg, *Encyclopedia of Jewish Medical Ethics*, Vol. II (Feldheim, 2003), translated by Dr. Fred Rosner, pp. 695-706. Rabbi Steinberg attributes the first discussion of a direct and specific definition of death to Rabbi Moshe Sofer (known as the *Hatam Sofer*) who wrote: "If a person lies like an inanimate stone, has no pulse, and then ceases to breath, our holy Torah considers that person to be dead." Responsa *Chatam sofer*, *Yoreh de`ah* #338.

3. Rabbi J. David Bleich so states in "Artificial Heart Implantation," in *Contemporary Halachic Problems*, Vol. III. (KTAV, 1989), p 161.

4. Whether the use of this definition in the modern era of medicine is an accurate extension of tradition can be debated but would be the topic of a different discussion.

5. The word "modern" is used in reference both to chronology and to the branch of Orthodoxy with which these *poseqim* are usually associated.

6. Rabbi Herschel Schachter, "Determining Death," *Journal of Halacha and Contemporary Society* 17 (spring 1989), pp. 32-40; Schachter, Rabbi Herschel, *Assia* ,Vol. 7, 5754 pages 188-206.(Translations from the Hebrew are by the author). While Rabbi Schachter's papers are more than 15 years old, he continued to advocate these positions as recently as 2006. See the report of Rabbi Josh Yuter on the Yeshiva University medical ethics conference at http://joshyuter.com/archives/2006/09/yus_medical_ethics_conference_organ_donation_and_brain_death.php accessed 5/5/09

7. Ibid., p. 36

flow is the definition of death." He proceeds in a second definition to elaborate that life depends on the presence of three organs[8] (ever *she-ha-neshamah teluyah bah*): the heart, the liver and the brain.[9] He notes that there are two areas of uncertainty: whether death is defined as the absence of just one of these organs or requires the absence of all three, and whether the cessation of blood flow to an organ qualifies as its absence. He also questions whether absence of blood flow to just one organ can mean death, as that would imply that someone with a gangrenous liver (or without a liver) would be classified as dead, even though he walks and talks. Since it is unclear whether the absence of one of these organs implies death, death is defined as the absence of all three organs, while someone who lacks at least one of the three is described as possibly dead/possibly alive(*safeq met/safeq hai*) and categorized as a *goses*. He then recommends that all issues of doubt that involve a prohibition having the force of biblical law (*issur de-oraiyeta*) be resolved stringently. In the situation where a patient is missing one organ (or there is no blood flow to one of the organs), because the person may be alive, it is forbidden to remove a respirator and cause death; but because the person may be dead, a kohen should not enter the room lest he become defiled by a corpse.

Rabbi Schachter allows for transplantation of these three vital organs. During the time the organ is out of body the patient is considered a *goses,* but after it is replaced the patient reverts to normal status, a recovered *goses*. In these articles he does not specifically address the question of whether an artificial organ (such as a mechanical heart) can be substituted for the native organ, but since he allows for transplantation, it can be inferred that the replacement of the usual human heart made from tissue with a mechanical pump would similarly be considered a transplant and not as a missing heart.

It may be postulated that the essential criterion of death is cessation of all bodily movement.

Rabbi Bleich maintains that "there is no life in the absence of integrated vital movement, and, conversely, whenever such movement is present, life exists."[10] Elsewhere he writes that "it may be postulated that the essential criterion of death is cessation of all bodily movement."[11] He does not give a precise definition of this bodily movement, but notes that "whenever either cardiac or respiratory activity is present, the organism must be regarded as yet animate on the basis of bodily movement that is indicative of the presence of vital forces."[12] He does not elaborate further on the definition of 'vital forces."[13]

Rabbi Bleich states clearly that circulation by artificial means (mechanical pump or artificial heart) is no different from the native heart function, and is a substitution that does not affect the determination of life and death.

8. Maimonides (whom Rabbi Schachter cites for further elucidation; see App. A) makes it clear that this term does not refer to the home of the soul, but only to organs that are necessary to support life. An analogy would be that a battery is necessary for a portable computer to function, but the battery is not equivalent to the computer. However, if the source of electricity is permanently removed, the computer has irreversibly ceased to function (that is, it is "dead").
9. For a more detailed discussion of this determination, see Appendix A.
10. Rabbi J. David Bleich, "Artificial Heart Implantation," in *Contemporary Halachic Problems*, Vol. III, (Ktav, 1989), p. 183.
11. Ibid.
12. Ibid., page 187.
13. Rabbi Bleich cites *Black's Law Dictionary* (1968) as the source of the term "vital forces."

The normal human heart secretes hormones (atrial natriuretic peptide), but Rabbi Bleich does not mention it, and therefore does not seem to require duplication of this particular function of the heart by the artificial heart or pump in order to qualify as heart function.[14]

A criterion for death that uses the term "body" has little meaning without a precise anatomic definition of the term.

Both Rabbi Bleich and Rabbi Schachter address the issue of decapitation based on the *Mishnah Ohalot* 1:6: "Man does not spread impurity until his soul departs. Likewise for animals. If they are decapitated, even if they are 'moving' they can spread impurity, similar to the tail of a lizard that 'moves' independently." This *mishnah* has been used to advance the theory that a decapitated person (or someone with no blood flow to the brain-physiological decapitation) should be considered dead. While in one article Rabbi Bleich allows that "total destruction of the brain might… be equated with decapitation, and the patient pronounced dead after total destruction has occurred,"[15] he also notes that "decapitation may be viewed, not as constituting death merely by reason of severance of the head from the body, but because decapitation causes cessation of all vital motion."[16] Therefore he does not seem to accept that removal of the head by itself implies death; it does so only if it results in cessation of all vital motion.[17] Rabbi Schachter interprets this *mishnah* as describing the halakhic implications of different types of movement, and not establishing a definition of death.[18]

In summary, Rabbi Bleich describes death as the absence of circulation or "vital movement" in the "body," and Rabbi Schachter defines life as the presence of circulation in three organs. Rabbi Bleich, however, does not give an anatomic definition of the term "body," or what constitutes the place where the circulation or movement needs to be found according to *halakhah*. In other words, life is defined as the presence of a function or movement, but no specifics are given as to where the function or movement needs to be measured or seen. Before the era of modern medicine, a person's survival required that all the necessary organs were present and functioning. The definition of the word "body" did not require further elucidation, because it was not possible to transplant body parts or substitute machines for organs. The body was considered one interdependent whole. In the present era, arms, legs, spleen, gallbladder, liver, lungs, intestines, heart, pancreas, and other body parts have been removed, substituted for, and/or replaced (transplanted) for various reasons without the person dying or being considered halakhically dead. A criterion for death that uses the term "body" has no applicability and little meaning without a precise anatomic definition of the term. If blood flow is the criterion for life, it should be possible to fill in the blank of this sentence: "the person is alive as long as blood flow is present in the _____ (organ, specific artery, or some part of the body)." Similarly, if movement or vital force is the criterion for life, then it is necessary to

14. His definition concentrates on equating circulation with movement, so it is not surprising that hormonal secretion is not considered a crucial part of heart function.
15. Rabbi J. David Bleich, "Time of Death" in *Judaism and Healing* (KTAV, 2002), p. 195.
16. Ibid., page 183.
17. It is possible that Rabbi Bleich believes that decapitation uniformly results in cessation of all vital motion and that this distinction is moot. However, since he does not give specific definition of "vital motion," it is impossible to determine.
18. Rabbi Schachter, *Assiya,* p. 139. The thrust of the *mishnah*, from his point of view, is to point out that the spastic movement seen after decapitation cannot be used as a sign that life is present. However, the decapitation by itself is not a sign of death. Death has to be established by other criteria.

specify where that movement needs to be found, and define exactly what is meant by movement or vital force.

Rabbi Schachter appears to narrow the definition of body by requiring the presence of three vital organs: heart, liver, and brain. However, the presence of just one of the organs is actually sufficient for the label of life, albeit as a *goses*. If this definition is applied precisely, it would mean that a head is not necessary for the label of life. A headless body with a beating heart, or a liver sitting on a lab bench, linked to a similarly situated pumping heart, or even possibly a mechanical pump, would be considered alive (albeit a *goses*).

The only way the blank in the paragraph above can be filled without similar results is with the word "brain." Filling the blank with any other organ or part of the body will result either in disconnected parts of the body in the laboratory being labeled as alive, people who up to now have been considered alive now being labeled as halakhically dead, or both.[19] Definitions of life based only on circulation and movement are intelligible only if the anatomic definition of the term body remains nebulous.

This lack of anatomic grounding in definitions of death becomes quite obvious when compared to the halakhah concerning conjoined (previously known as Siamese) twins. Rabbi Bleich writes[20] that joined bodies are considered twins (two separate halakhic lives) when two separate nervous systems are present.[21] Two lives are present when two separate nervous systems are present, even if the bodies share a heart and/or liver or other internal and external organs. Rabbi Bleich states that this is a well accepted concept in halakhah, and I am not certain that Rabbi Schachter would disagree.[22] The corollary obviously is that if two nervous systems are not present, then the baby is considered to be only one person. Therefore, the critical factor in determining if one or two people have been born is not the presence of two complete sets of three vital organs, and is not whether two sets of "vital forces" are present, but whether there are two nervous systems. In other words, for a halakhic life to exist, a nervous system has to be present. If the nervous system is not present, then the life does not exist. While blood flow can also be a necessary factor for the presence of halakhic life, this definition of conjoined twins means that blood flow is not the only necessary factor. This is a direct contradiction of Rabbi Bleich's contention in his definition of death that the presence or absence of "vital forces" is the only criterion for life.[23]

For a halakhic life to exist, a nervous system must be present.

Rabbi Schachter's approach fares slightly better when applied to the issue of conjoined twins, but only if the definition of an organ being present refers to its function and not its anatomic presence. While conjoined twins sometimes share hearts and livers, since both twins receive the function of the heart and liver, each twin can still be thought of as

19. To be discussed in detail later.
20. Rabbi J. David Bleich, "Survey of Recent Halakhic Periodical Literature: Conjoined Twins," *Tradition* 31:1 (1996): 92-125.
21. From Rabbi Bleich's discussion involving being able to feel pain, have different emotions, and perform other functions, it is clear that having a brain only (and not necessarily a brain and a spinal cord) would suffice.
22. Rabbi Bleich discusses the situation where the head is only an "appendage," and in this case there may some doubt as to whether a separate life is present or not. Of note, the discussion centers on the function of the extra head, not specifically on anatomy or whether intact brain cells are present.
23. The only way to reconcile the two would be to posit that Rabbi Bleich's "integrated vital forces" were actually the result of the neurological activity of the brain. However, he does not make this equation in any of his papers that I have reviewed.

having all three vital organs. (Obviously if an anatomic heart or liver is required, then the *halakhah* according to Rabbi Schachter's approach would mandate that two lives would only be present if two complete sets of organs were present, otherwise one would be considered a *goses* from the start). However, since Rabbi Schachter does not make a distinction between the brain, liver and heart (all three have the same halakhic weight, none being more important than any other), a baby born with an extra heart or liver, but not the extra brain, should be considered to be two babies, although one would be a *goses* (having only one or two of the three vital organs). There would be no halakhic distinction between having an extra head and having an extra heart or liver.

The development of artificial hearts and organ preservation further illustrates logical lacunae in the definitions

The development of artificial hearts and organ preservation further illustrates the logical lacunae in the above definitions. As long as an artificial heart is plugged in or receives a power supply, it will beat forever (assuming no mechanical breakdown problems). Therefore, a body that is connected to a mechanical pump and has resultant circulation will always be considered alive according to Rabbi Bleich's opinion. As long as there are patent arteries, one could attach a pump to a body and it would live forever because it had circulation, the only criteria for life. Also, removing the pump would be forbidden because that would end the life. If Rabbi Schachter allows a mechanical pump to replace heart function, this problem would apply to his approach as well. On a more practical level, once a patient received a mechanical heart, it would never be permissible to turn it off or remove it without replacing it. The patient would live as long as the power was on, regardless of the condition of the body, because a machine is capable of supplying circulation; and circulation, according to these opinions, is the criterion of life.

Organs can also be preserved outside the body. A heart, liver, and other organs can be preserved on the laboratory bench outside the body as long as they receive circulation. According to the approaches of Rabbis Bleich and Schachter, these preparations could also be considered life, because they have circulation and/or intact organs, which again, are the stated criteria for life.[24]

Since organs (and, according to Rabbi Bleich, tissue) with preserved circulation are considered life, one could actually divide a living human body into separate parts, and each part would be considered alive. According to Rabbi Schachter's definition, each vital organ could be separated out, and one body could be made into three separate entities (brain, liver, and heart), with each being considered alive as long as blood circulated through it. Rabbi Bleich's definition allows the body to be divided into an almost unlimited number of parts, each being considered alive in and of itself. Since any tissue with circulation is considered alive by his definition, one could have many separate

24. A number of other preparations could also be considered. It is possible to remove a head from one person and transfer it to the body of another. One could also keep an isolated head (separated from the body) alive for at least a few days. Both have been done in primates, and the transferred or isolated brains had EEG tracings consistent with an awake state, tracked objects with their eyes, chewed, and showed other signs of normal brain function, despite the odd circumstances. For further details see R J White, L R Wolin, L C Massopust Jr., et al, "Primate cephalic transplantation: neurogenic separation, vascular association," *Transplant Proc.* 3:1 (1971): 602-4. And Robert White, Maurice Albin, et al. "The Isolation and Transplantation of the Brain. An historical perspective emphasizing the surgical solutions to the design of these classical models" *Neurological Research*, 18 (1996): 194-203.

sections of artery or veins attached to pumps and each would be considered alive.

This leads directly into the problem of personal identity. If one body has been divided into parts, and all of the parts are considered alive, which one is actually the person, or have more people been created? Rabbis Bleich and Schachter do not appear to have anticipated this possible result, and therefore do not address it. They also do not address a related identity issue. Almost every day hearts, livers, and other organs are transplanted. It is assumed that after the transplant the recipient is still the same person, just with a new organ. It is also assumed that the donor is obviously dead, although some organs are still functioning in a new body. The definitions of life and death as proposed by Rabbis Bleich and Schachter do not provide any basis for these assumptions. In fact, if their definitions are applied with precision, two lives are still extant in the recipient. In the case of a heart or liver transplant, since at least one of the three vital organs is still functioning and receiving circulation, according to Rabbi Schachter the donor is still alive. If both the heart and liver were transplanted from one person to another person, the recipient body now holds two of the three vital organs from the donor, and a case could be made that the recipient should actually have the identity of the donor! At the very least, the donor is still a *goses* because two-thirds of his vital organs are still functioning and receiving circulation. By Rabbi Bleich's definition, because there is still vital function in part of the donor (the organ that is in the recipient), there is no reason to posit that the donor is dead.[25]

Since organs with preserved circulation are considered life, one could actually divide a living human body into separate parts, and each part would be considered alive.

The definitions of death discussed here produce these results because they do not specifically address the anatomic basis of a person—the home of the soul[26]—and fail to follow the positions on which they are based to their ultimate logical conclusions.

According to our tradition, a living human being is a combination of a body and a soul. Metaphysically and halakhically,[27] the moment of death is the moment of the departure of the soul.[28] Since we cannot objectively measure the presence or absence of a soul in the body, definitions of death are actually determinations of the earliest possible moment where certain knowledge exists that the soul has already left the body. However, if the soul were located in a particular part of the body, removal or irreversible failure of that part of the body would also mean that the soul had departed, and the person was dead.

As mentioned above, in the pre-modern era of medicine, the body could be considered one interdependent whole. The intact function of

25. One could argue that the donor organ/tissue automatically assumes the identity of the host. This may be reasonable if there is clarity regarding which participant is the donor and which is the host. If both participants are considered living human beings, it would be necessary to establish criteria as to which was the host and which was the donor, and explain why something that fulfills the criteria of life is subsumed by another and the label of life therefore removed.

26. I am indebted to the incredibly prescient papers of Rabbi Azriel Rosenfeld, zt"l, whose works I discovered while revising this paper, for helping formulate these ideas in a coherent fashion. Specifically "Human Identity: Halakhic Issues," *Tradition* 16, 3 (Spring 1977): 58-74; "Religion and the Robot," *Tradition* 8, 3, (Fall 1966): 15-26, and "The heart, the head, and the *halakhah*," *New York State Journal of Medicine* 70, 20 (1970): 2615-19. The discussion of the soul presented here is based extensively (quotes and paraphrase) on the third paper.

27. Rabbi Rosenfeld in "The Heart, the Head and the *Halakhah*" references *Mishnah Yevamot* 16:3, *Mishnah Ohalot* 1:6, and *Tosefta Gittin* 5:1.

28. Both Rabbi Schachter and Rabbi Bleich quote this concept. Rabbi Bleich, in discussing heart transplants and artificial hearts, also concludes that the heart is not the seat of human identity. However neither extends the logical inferences beyond that.

every organ was necessary for the preservation of function of every other organ. Failure of one organ meant certain failure of the entire body. Under these conditions, it was not necessary to consider if the soul resided specifically in one part of the body or another. No matter where the soul resided, that part of the body would fail when any of the vital organs failed. Since circulation and respiration were the most obvious and crucial systems, failure of these functions guaranteed the loss of function of the entire body, and with it, somewhere, the part that held the soul.

The brain is the home of the soul.

In the modern era of medicine, removing, transplanting, and substituting organs and body parts is relatively common. If the organ removed is the home of the soul, then removal of that organ necessarily results in the halakhic death of that person. If the body part has been removed and the person is still considered halachically alive, then obviously that part could not be the home of the soul. For example, if the heart is the home of the soul, then if the heart of A is transplanted into the body of B (and the heart of B removed and discarded), then in fact the soul of A is in the body of B. Therefore A should be considered halakhically alive and B has been murdered.

Every organ and body part except the brain has been removed or transplanted without a halakhic declaration of death. The implication is that the brain is the home of the soul. Practical confirmation of this conclusion comes from consideration of conjoined twins. The only time *halakhah* or modern society even considers whether one or two humans have been born is when the newborn has more than one head. The duplication of every other organ (including the heart) does not raise any question of multiple identities or souls. Therefore, it appears that the universally accepted *halakhah* regarding issues of organ removal, substitution and transplantation, consciously or not, is based on the brain, and only the brain, being the seat of the soul[29]. Even if one does not wish to invoke the concept of the soul, this means that there exists a specific portion of the human anatomy without which there can be no life, and conversely, while it is present and functioning, life exists. The fact that organs can be safely transplanted and body parts safely removed makes it necessary to make a determination regarding what anatomic parts are crucial to the continued life of the person.

The exact definition of life can be discussed and debated. However, once a life is acknowledged to exist, either that life continues to exist or has ceased to exist, a condition labeled as death. For any particular life, there are two dichotomous options, life or death, and the dividing line between the two is the definition of death. If the conditions defining death are fulfilled, then the life has ended. If the conditions have not been fulfilled, the life still exists. One can also use a definition of life.[30] As long as the conditions for life are fulfilled, then the life continues to exist. If the conditions for life are not fulfilled, then death has occurred. There is no intermediate option between life and death, and ultimately the life has to be classified as existing or not.[31]

29. The traditional sources regarding the home of the soul are discussed in some detail by Rabbi Rosenfeld in "The Heart, the Head, and the *Halakhah,*" note 19 above.
30. The boundary between life and death is the same, no matter if one defines it from the side of life, or the side of death.

This may seem elementary and axiomatic, but application of this principle results in what may be unanticipated consequences. For example, one could define death as occurring when every neuron (brain cell) is dead. This means that as long as one brain cell is alive, the person is considered alive. Recent research has found that on routine autopsies, even when no special steps have been taken for preservation, brain cells can be cultured (and therefore are still alive) for at least eight hours after the heart has stopped and circulation has ceased.[32] Therefore, if this definition is applied precisely, death should not be pronounced for at least eight hours after the heart has stopped. In addition, if some of the brain cells were removed and kept alive in cell culture (for days, weeks, or even months), the person is still not dead until those brain cells have ceased to function. It is now apparent that a seemingly reasonable definition of death applies the label of life to a few neurons in a Petri dish. If this is an unacceptable outcome, the definition is in need of revision.

A cogent definition of the border between life and death requires consideration of the logical *sequelae* and of the anatomic home of the soul, but that is not sufficient. For the purposes of this discussion, every cell or organ in the body has two properties: it is a physical piece of tissue (anatomy), and it has a specific function (physiology) that provides a direct or indirect benefit to the entire body. A definition of life, and therefore death, can require tissue, function, or both. Those that require only a function such as circulation, hepatic function, or respiration, will have the unavoidable result of applying the label of life to any and all collections of tissue that are the beneficiary of that function. Positions that mandate the presence of the specific human organ that is supplying the function will exclude from life the situations where a machine takes over the function of the organ. Rabbi Schachter's attempt to identify the vital organs that are necessary for life is an improvement on Rabbi Bleich's function-only approach, but his anatomic choices allow for isolated hearts and livers to be considered alive (albeit as a *goses*).

A seemingly reasonable definition of death applies the label of life to a few neurons in a Petri dish.

The situation is actually a more complex. Anatomy is related to function. An organ that is present in a body does not necessarily function, or function adequately. If it is diseased or does not receive fuel and oxygen, it will cease to function. If the absence of glucose and oxygen persists, the organ will irreversibly cease to function, and in some cases the cell membranes themselves will lose integrity and become permanently incapable of utilizing energy, a state termed "cell death." Therefore, an anatomy-based definition of life and death requires a concomitant declaration as to the functional status of that piece of anatomy. It is not enough to specify that a particular piece of anatomy is required for life; the functional status of that anatomy needs to

31. *Halakhah* recognizes the category of *goses*, but a *goses* is a living person for most if not all legal purposes. Rabbi Schachter utilizes the category of *safeq met*/*safeq hai*, but the way it is applied it appears to be the category of life with additional stringencies. Some halakhic issues, such as establishing the start of mourning, or a specific date for *yahrzeit* are not easily resolved by resorting to a stringent position. With this concept of *safeq met*/*safeq hai*, there are two possible dates of death: when the patient is declared to be in that uncertain state and when he is declared definitely dead. Unless the family is going to be required to mourn twice, or observe two *yahrzeit*s, a single date of death is necessary. Going even further, a life insurance policy based on the halakhic definition of death, would necessitate that the situation described as *safeq* be declared as either life or death, and the option of stringency would not be possible.

32. Verwer, Ronald W., Hermens, WTJMC, et al, "Cells in human postmortem brain tissue slices remain alive for several weeks in culture", The FASEB Journal, 16, 2002, 54-60.

be specified as well. It should be kept in mind that approaches that accept the substitution of mechanical function for the native function define that organ's presence not by its specific anatomic presence or by the status of its cells, but by its function. In other words, if one accepts that a pumping machine can replace a heart made of human tissue, then one is not concerned whether the heart cells are dead or alive, only with whether the pumping function has been maintained.

The definition of life based on the presence of circulation achieved widespread acceptance both in *halakhah* and in the secular world at a time when the body could be considered an indivisible whole. This definition fails to yield logically cogent results in an age when the body is no longer seen and treated as an interdependent structure. It also conflicts with the halakhic definition of life that is applied in the cases of conjoined twins as well as decisions regarding transplantation. A definition of life that identifies the brain, the seat of the soul, as the necessary beneficiary of the functions of circulation and respiration would help resolve some of the logical pitfalls. Two other concepts developed and/or applied by Rabbis Bleich and Schachter may also prove to be useful: (1) the presence or absence of an organ is defined by the presence or absence of its primary function and not by the life and death status of its constituent cells; and (2) an organ can have a secondary function (such as hormone secretion by the heart) which does not have to be considered in determining if the overall function of the organ is present. It is not the intent of this paper to propose a halakhic definition of death. However, in order to be coherent in the era of modern medicine, whatever definition is adopted will not only need to have halakhic justification, but will have to take into account the "home of the soul" and address both anatomy and physiology. Finally, what is categorized as life under the definition should fit our established conception of life, and what is categorized as death needs to be recognizable as dead. May God grant wisdom and understanding to those who have the unenviable task of establishing such a definition.

Appendix A:

Rabbi Schachter quotes the *mishnah* in *Arakhin* (20a) and BT *Temurah* (10b), where the concept of "*ever she-ha-neshamah teluyah bah*" is mentioned. Although examples are given in the *gemara*, no specific definition of the concept is mentioned. For a specific list, he quotes Maimonides, *Mishneh torah, Hilkhot arakhin*, Chap. 2(1)), where Maimonides uses the brain, the heart and the liver as examples of organs that life is dependent upon. Rabbi Schachter rules out applying modern medical/scientific knowledge to the issue by quoting the Hazon Ish (*Yoreh de`ah* 5:3), who divided time into three two-thousand-year epochs. The second 2,000 years were designated the time of Torah, and, according to this opinion, halakhic categories established during the time of Torah cannot be changed after this time (approximately 240 C.E. according to Rabbi

Schachter). Rabbi Gil Student, in his paper "Halakhic Responses to Scientific Developments," reviewed a number of alternative approaches and demonstrates that this approach of the Hazon Ish is not necessarily universally accepted.[33]

Maimonides lived in the twelfth century, after the close of the two-thousand-year era of Torah. Therefore, according to the Hazon Ish's categories, Maimonides' view is in the same category as modern medical views, and therefore, according to this approach, cannot have any influence on *halakhah*. In addition, as Rabbi Schachter points out in a footnote and Rabbi Edward Reichman points out specifically,[34] it is possible, if not likely, that Maimonides' view was influenced by Galen. Maimonides wrote "…..You already know that his [the great sage Galen] opinion is that there are three major organs, the heart, the brain, and the liver, and that not one of these can receive power from another organ under any circumstances…"

Under the limitations of Rabbi Schachter's application of the Hazon Ish, Maimonides can have halakhic influence under only two very specific conditions. If he was quoting *Hazal*'s view exactly without adding anything at all of his own (any personal contribution of his would come outside the limits of the era of Torah), then his view could be considered as an exact reflection of the understanding that existed before the close of the era of Torah (more than eight hundred years before he was born). The other possibility is that Maimonides' interpretation of Galen exactly mirrored the scientific understanding of *Hazal* at the close of the era of Torah. In the second circumstance, we would also have to accept the fact that the immutable halakhic definition of life and death is based on the mistaken science of an idol-worshipping heathen. In addition, it is quite possible if not probable that Maimonides did not think that the definitions were closed at the time the Hazon Ish did. He writes that the doctors should be consulted regarding the definition of a related halakhic category, that of human *treifot*.[35]

A definition of life that identifies the brain as the beneficiary of the functions of circulation and respiration would resolve some pitfalls.

Rabbi Schachter does not use Maimonides' exact definition of *ever she-ha-neshamah teluyah bah* (an organ on which the soul is dependent). Rabbi Schachter is uncertain if death is defined by the absence of all three organs, or just one organ. He resolves the issue by defining death as the absence of all three, but declares that the absence of one organ renders the person a *goses*. Maimonides (*Hilkhot arakhin* 2:1) does not express a similar uncertainty. He refers specifically to "every [other] organ the removal of which from a living person will result in death." The simple meaning of Maimonides' statement is that the definition of ever *she-ha-nishamah teluyah* bah is an organ whose absence from the body results in death. He does not express any uncertainty. Even assuming that Maimonides' view somehow exactly reflects Hazal's view at the end of the Hazon Ish's two-thousand-year epoch of Torah, Rabbi Schachter's deviation from Maimonides' view is still a deviation from the halakhic position that he claims was closed almost eighteen hundred years ago.

33. Rabbi Gil Student, "Halachic Responses to Scientific Developments" Published online at: http://www.aishdas.org/toratemet/science.html 2001(accessed 9/3/2008). The topic of *treifot* and scientific knowledge has also been reviewed recently in the journal, *Hakira*.

34. Rabbi Edward Reichman, "The Halakhic Definition of Death in Light of Medical History," *The Torah U-Madda Journal*, p. 148-174.

35. Maimonides *Hilkhot rotse'ah* 2:8. I am indebted to Rabbi David Novak, for pointing this out and providing a likely source for the Maimonides' (*Niddah* 22b). Rabbi Schachter (*Assiya* p. 139) in fact quotes this Maimonidean passage, but only in a discussion separating human *treifot* from animal *treifot*.

The Halakhic Parameters of Delaying Procreation

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Meorot
A Forum of Modern Orthodox Discourse

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Abstract: This article attempts to demonstrate that there is a strong halakhic basis to allow a childless couple to postpone procreation temporarily and without an arbitrary time limit imposed. It focuses on the rulings of Rivash and Rema, who recommend that the rabbinic leadership adopt a *laissez faire* policy regarding marital issues The talmudic teaching extolling zealousness is not absolute and would not apply if a delay would enhance the performance of the commandment. The fear of a premature death is not a factor with regard to the commandment to procreate.

Meorot 8
Tishrei 5771
© 2010

A Publication of
Yeshivat Chovevei Torah
Rabbinical School

The Halakhic Parameters of Delaying Procreation[1]

Moshe Kahn

As a Talmud teacher at Stern College for Women for almost three decades, I have found myself confronted in recent years by an increasingly greater number of requests to decide questions of marital issues. My students seem simultaneously pulled in opposite directions. On the one hand, many of these women are classically modern Orthodox, independently learned and fluent in halakhic texts; on the other hand, they appear increasingly reliant upon rabbinic authority to decide matters that may fall under the rubric of personal autonomy. Nowhere is this tension more poignant than in questions of contraception.[2]

Many of my finest students are unaware of the latitude offered them by halakhic precedent. They are often embarrassed by their wish to postpone procreation (as if it reflects a lack of faith) and they approach me with painful trepidation to tell their stories. Some of them and their prospective husbands intend to pursue graduate study, they are torn by a perceived difficulty in managing baby and career. Others, who may be leaving their childhood home for the first time, are struggling with a lack of confidence in their ability to assume parenting roles. And I suspect that there are further reasons that these young men and women do not know or cannot articulate. They frequently ask their rabbi because they believe or have been told that they must do so, sometimes because they perceive rabbis as benign paternal authorities who will help them cope with their anxieties.

We, as rabbis, must give our young men and women proper counsel and guidance. In that context, I would like to consider the following questions: Does a couple's wish to delay fulfilling the commandment to procreate require rabbinic permission? If so, what are the halakhic determinants of the discussion? If not, what are the consequences of rabbinic involvement into this personal matter?

Does a couple's wish to delay fulfilling the commandment to procreate require rabbinic permission?

At the outset, we must distinguish between two categories of positive Torah laws. Some positive commandments are time-bound: Once a designated time passes, the opportunity to fulfill them is gone. Eating *matsah* on the fifteenth day of Nissan is such an example. Other positive commandments—such as procreation—are not limited to a certain time. If a man[3] fulfills this mandate late in life, the fulfillment is just as valid as that of a younger man. Nevertheless, the question remains whether the delay itself is permitted.

There are three halakhic issues that we must address:

1. Is a delay considered a violation and cancellation of the commandment itself until it has been fulfilled?
2. Does the concept of *zerizin maqdimin le-mitsvot*, the conscientious fulfill the commandments expeditiously, necessitate a prompt fulfillment?
3. Does the fear of an early demise—*heishinan le-mitah*—also necessitate a prompt fulfillment?

1. I owe a debt of gratitude to Dr. Judith Isaac for assisting me in the preparation of this article.
2. The halakhic permissibility of various methods of contraception is beyond the scope of this article.
3. Only men are obligated.

Is a Delay a Violation?

At the end of his commentary to *Nega`im*, the *Hazon Ish* discusses the temporal parameters of positive non-time-bound commandments.[4] He first suggests, based on a ruling in the Talmud (BT *Mo`ed qatan* 7b), that delaying the performance of such laws is a violation of the laws themselves. In other words, even though a man can still fulfill the commandment, the mere delay constitutes a temporary cancellation of that law. In that context, the *Hazon Ish* cites the talmudic discussion (ibid.) of a *kohen*'s obligation to examine a person suspected of having contracted leprosy. Can a *kohen* delay the performance of this obligation? The Talmud cites a biblical verse (Lev. 13:14; 14:36) to prove that a *kohen* can delay for the purpose of facilitating the fulfillment of another statute (and according to one opinion even for a secular purpose). By implication, it would appear that a postponement is forbidden for those commandments that remain unrooted in an explicit Biblical text to permit a delay. The *Hazon Ish* provisionally suggests, therefore, that a delay may constitute a temporary cancellation of the law itself.

Yet the *Hazon Ish* ultimately rejects that view, given the absence of support for it in other talmudic rulings. He says, for example, that the mandate of *halitsah/yibbum* can be delayed. He also cites the talmudic statement (BT *Pesahim* 4a) that, in general, a delay in fulfilling a positive commandment represents only a lack of conscientiousness, not a cancellation.[5] He therefore concludes:

> …with all non-time-bound positive commandments one can delay for the sake of another *mitsvah* or to avoid a monetary loss. And the need for a verse in the leprosy case is either because the essential nature of the mandate is particularly severe, or because the *kohen* is relieved of the more general obligation expressed in the talmudic dictum of *zerizin maqdimin le-mitsvot* (BT *Pesahim* 4a). Still, if one procrastinates for no reason at all, he might arguably cancel and violate the injunction. Yet even in such a situation, it possibly may not be a violation: As long as his intention is to fulfill the law, the delay is not viewed as a nullification of the Torah's mandate. This position is supported by a ruling of *Tosafot* (BT *Pesahim* 29b): If one possesses *hamets* at the start of *Pesah*, with the intention to destroy it later during *Pesah*, he does not violate the prohibitions against owning *hamets*.[6]

In sum, the *Hazon Ish* starts with the view that a delay in performing non-time-bound commandments constitutes a cancellation of the law. He then rejects that position based upon several talmudic rulings, and finally concludes that a delay would be permitted for a divine or secular motive and possibly even for no reason at all. But the *Hazon Ish* only discussed non-time-bound *mitsvot* in general; he did not address the specific commandment to procreate.

"The commandment to procreate begins at the age of seventeen; if he is not married by the age of twenty he is violating this mandate."

Regarding procreation, R. Huna (BT *Qiddushin* 29b) says that a man should be married by the age of twenty, because all his days will otherwise be filled with immoral sexual thoughts. In the *Mishneh torah*, Maimonides codifies the *halakhah* as follows:

> The commandment to procreate begins at the age of seventeen; if he is not married

4. He does not discuss the specific commandment to procreate, but only this category of *mitsvot* as a whole.
5. The *Hazon Ish* does not find this proof very compelling, because this citation refers to time-bound commandments, which one does not violate until the passage of the particular time frame.
6. The translation is mine.

> by the age of twenty he is violating and canceling this mandate (*Hilkhot Ishut* 15:2).

Clearly, Maimonides would agree that a person can fulfill this commandment at any age since, according to the Torah, it is not time-bound. However, for as long as he postpones, he is transgressing and temporarily abrogating the law.

Maimonides codifies a similar ruling with respect to the mandate of circumcision (*Hilkhot Milah* 1:2). He rules that from the time an uncircumcised male becomes an adult he is transgressing and canceling this mandate, yet he is not liable for *karet* unless he dies uncircumcised. Undoubtedly, once circumcised, he has indeed fulfilled his obligation. Nevertheless, until that time, each day he procrastinates is considered an active breach of the statute.

Rosh differs from Maimonides on the permissibility of delay

Maharit (Responsa, Section 2, *Yoreh de`ah* 47) accepts Maimonides' formulation of the commandment to procreate in a case involving a thirty-year-old man who is engaged to a young girl of six. The man has taken an oath (*shevu`ah*) not to marry another woman during her lifetime and never to divorce her. The question posed to Maharit is whether his vow violates the Torah, since she is presently too young to have children and he will have to wait. If it is a violation, the vow is null and void. Maharit contends that the oath is valid and takes effect since it does not totally negate a law of the Torah. The Torah's mandate to procreate can still be fulfilled, albeit at a later time. However, argues Maharit, even though the oath is valid, he is still transgressing the commandment to procreate because any delay in the fulfillment of a Torah law is viewed as a transgression of the law.

Rosh differs from Maimonides on the permissibility of delay, arguing that the court may force a man to marry by the age of twenty in order to enforce the mandate to procreate (*Yevamot* 6:16). He specifically notes that the courts can coerce someone *who does not want to marry* [emphasis mine], and herein lies the difference between Maimonides and *Rosh*. Maimonides simply says he does not marry—the mere fact that he reaches the age of twenty and is not married is a violation. But according to *Rosh*, he is only subject to judicial coercion if he does not ever want to marry. By implication, if he wishes to marry at a later date, he would not be transgressing. (The *Pithei teshuvah* makes this inference, which I will elaborate on later.)

Rashba (Responsa, 4:91) rules in the same way as Rosh. Rashba was asked whether a person's vow not to marry for a certain period of time violates the Torah. If that were the case, the vow would be void. Rashba responded that the vow does indeed take effect because it does not annul a Torah commandment: The man can fulfill both the vow as well as the commandment to procreate. Furthermore, Rashba claimed this ruling would apply even for a time-bound statute, such as circumcision: If a father swears not to circumcise his son on the eighth day before the afternoon, he should heed his vow and wait until the afternoon because the vow is not a violation; it only expresses a lack of conscientiousness. By comparing a delay to marry with a delay to circumcise until the afternoon of the eighth day, Rashba implies that the command to procreate is not violated by delay.

The *Shulhan arukh* codifies the law according to the opinion of Rosh:[7]

> The commandment to marry begins at the age of eighteen…and if by the age of twenty he is still not married, *and he does not want to marry* [emphasis mine], the court will force him to do so. However, someone

7. *B'er ha-golah, Even ha-ezer* 1:9

> who is immersed in Torah study and fears that the responsibilities of marriage will interfere with his studies is allowed to delay (*Even ha-ezer* 1:3).

The *Shulhan arukh*'s statement that "he does not want to marry" seems to entail an affirmative decision not to marry. The implication is that if he wants to marry at a later date, he is permitted to do so.

This explication of the *Shulhan arukh* is endorsed by the *Pithei teshuvah* (*Even Ha-ezer* 1:5). The *Pithei teshuvah* cites the opinion of Maharikash, who expounds on the ruling of the *Shulhan arukh*:

> If he ultimately wants to marry but he is seeking a temporary stay, the court will not compel him to do otherwise (*Erekh Lehem Pirya Va'rivya*).

By implication, Maharikash permits a delay of marriage, because if it were forbidden then the court should compel. One might argue that even though the court does not compel, the delay might still be illegitimate. However, the *Otsar ha-poskim* (*Even ha-ezer* 1:5) interprets the opinion of *Maharikash* as saying, "it would be *permitted* [emphasis mine] to postpone since he ultimately wants to marry."[8]

There seems to be an internal inconsistency in the ruling of the *Shulhan arukh*. If the general rule is that anyone is allowed to postpone marriage (provided he intends to marry at a later date), why is there a specific exemption for the person immersed in Torah study? By making a distinction between these two individuals, one might infer that only the Torah scholar is permitted to delay but everyone else is not.

This inconsistency is resolved by a comment of the *Beit shemu'el*[9], who says (*Shulhan arukh*, *Even ha-ezer* 1:5) that someone immersed in Torah study is permitted to delay marriage because he might not persevere in his study if he were compelled to support a family. In this view, the Torah scholar can delay indefinitely, as long as he lives, provided he is able to control his sexual urges. The distinction between the Torah scholar and the ordinary person, according to the *Shulhan arukh*, is that one who studies Torah can postpone marriage and procreation for his entire life; everyone else is not absolved of his obligation and can delay only temporarily.[10]

If he wants to marry at a later date, he is permitted to do so.

In his commentary *Ha`ameq she'eilah* (*She'eiltot* 5:4), Netsiv apparently agrees with the *Pithai teshuvah* that one is permitted to delay marriage and procreation. Yet he questions the particular nature of the obligation to procreate and its relevance for Torah scholars. He cites the talmudic statement (*Mo`ed qatan* 9b) that a personal obligation that cannot be executed by others cannot be neglected for the sake of Torah study. Since procreation is such an

8. The concluding statement of *Maharikash*—that he should not delay beyond the age of twenty-four—is based on his concern regarding uncontrollable sexual urges, not the injunction to procreate. Obviously, if he is already married, this would not be an issue.

9. The *Beit shemu'el* was not deliberately seeking to address this inconsistency, but his comments are instructive for our purposes.

10. The ruling of the *Shulhan arukh in Even ha-ezer* 76:6 does not necessarily contradict the above ruling. There, he says that a husband who has not yet fulfilled the commandment to procreate is obligated to provide his wife with *onah* until he has fulfilled this commandment (procreation), even if his wife is willing to absolve him of the *onah* obligation. This does not necessarily imply that a postponement in the commandment to procreate is forbidden. It does suggest that the commandment to procreate and the commandment of *onah* are connected. The obligation to procreate should be fulfilled through the ongoing fulfillment of the obligation of *onah*. And as long as he has not fulfilled his obligation to procreate, his wife cannot absolve him of his *onah* obligation.

obligation, Netsiv asks why Torah study should take precedence over procreation. He answers, "Any personal obligation that is not limited to a fixed time is analogous to a personal obligation that can be implemented by others." Since the requirement to procreate is not restricted to a set time, it should be treated as a commandment that can be performed by others on one's behalf.

One who studies Torah can postpone procreation for his entire life; everyone else can delay only temporarily

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One must conclude based on Netsiv that the Torah scholar's obligation to procreate is no different from his obligation, say, to visit the sick. If the Torah scholar is released from that obligation (because others can perform it on his behalf), he is likewise released from the obligation to procreate without delay. Consequently, the ongoing act of delay does not violate the law.[11]

Zerizin Maqdimin le-Mitsvot

There is a further dimension to the discussion of delay, namely, the Talmudic principle of "*zerizin maqdimin le-mitsvot*," the conscientious are zealous to fulfill the commandments expeditiously (BT *Pesahim* 4a). One can derive the importance of this principle from a *mishnah* (BT *Yevamot* 39a) that states that the commandment to perform *yibbum* is imposed upon the oldest brother. If he refuses, it falls to the other brothers. If they all refuse, the oldest brother is told by the courts to either consummate the relationship with *yibbum* or release the woman through *halitsah*. The courts do not honor the older brother's request that she wait for the younger brother who is a minor to become a *bar mitsvah*, or for the return of the oldest brother from abroad. Apparently, the law desires a speedy resolution of the *yevamah*'s predicament.

The Talmud (BT *Yevamot* 39a) then discusses the comparative desirability of *halitsah* by the oldest brother or *yibbum* by a younger brother who is an adult. The Talmud attempts to prove from the *mishnah* cited above that *halitsah* by the oldest is preferred because we do not accept the brother's request to wait for the minor, even though he might decide to perform *yibbum*. However, the Talmud continues, this proof is inconclusive because that *mishnah* also states that we do not wait for the oldest brother to return from abroad. Apparently, says the Talmud, there is another principle that determines the halakhic decision: "one should not delay in the performance of a *mitsvah*."[12] Whether *yibbum* by the younger or *halitsah* by the oldest is preferred, we do not delay the fulfillment of the precept. This conclusion demonstrates that one should encourage the prompt fulfillment of a commandment even if a delay would enhance the way in which it is performed.

Yet the *Terumat ha-deshen* concluded otherwise in a ruling (1:35) concerning the timing of the blessing for the new moon. He was asked if it would be preferable to recite the blessing at the earliest time or to wait until Saturday night, when the community would be dressed in formal *shabbat* attire and this precept would thereby be beautified (*hiddur mitzvah*). The *Terumat ha-deshen* responded that it is preferable to wait until Saturday night. He added the condition that the delay should not jeopardize the prospect of performing the commandment. Therefore, he required that it still be early in the month and there be several opportunities to perform the commandment after Saturday night.[13]

The *Trumat ha-deshen* reconciled the apparent contradiction between his decision and the

11. If a postponement actually were to violate the Torah's injunction to procreate, then he must perform the *mitsvah* now. It would be totally incongruous for Netsiv to compare it to a Torah obligation that others can fulfill on his behalf.
12. This principle, although worded differently, basically parallels the above-mentioned dictum extolling zealousness.
13. For example, inclement weather would require a further delay.

talmudic law (in the matter of *yibbum*) that one does not wait for a preferred outcome by introducing another consideration: the performance of a commandment must not be delayed if there is a realistic fear that it might never be fulfilled. In the case of *yibbum*, for example, the minor brother of the deceased may die before reaching adulthood. Yet if it is reasonable to assume the statute will be obeyed later and in a more dignified manner, it is better to wait. The *Shulḥan arukh* codifies the law according to the opinion of the *Terumat ha-deshen* (*Oraḥ ḥayyim* 426:2).

If one applies the *Terumat ha-deshen's* position on *hiddur mitsvah* to the commandment to procreate, it appears that a couple may delay having children until a time when they will better be able to care for their children. The fulfillment of the commandment to procreate would be enhanced and beautified by parents who are psychologically and materially capable of nurturing their child.[14]

***Ḥaishinan le-Mitah*—The Risk of Death**

As the *Terumat ha-deshen* stated, however, there are limits to the justification for postponing the performance of a commandment. If there is a chance the statute will never be fulfilled, one should execute it immediately. In numerous cases the Talmud considers the possibility of premature death as a necessary concern and a justification for not procrastinating. That concern may apply to the fulfillment of any commandment, including procreation. However, the Talmud presents inconsistent applications of the principle that one must be concerned about death. For example, a *mishnah* (at *Yoma* 2a) states that the *kohen gadol* must be married in order to perform the service in the temple on Yom Kippur. To that end, it cites the opinion of R. Judah, who says that one must take into account the possibility that his present wife may die. Therefore, seven days before Yom Kippur, another woman should be identified as a potential wife. But the sages disagree with R. Judah, claiming there is no need to consider the prospect of death because death is uncommon (ibid. 13a).

The *Tosafot yeshanim* (ad loc.) challenges the view of the sages on the basis of the *mishnah* found in Yevamot 26a. That *mishnah* says that if two of four brothers are married to two sisters and the two married brothers die, the two sisters are subject to *ḥalitsah* but not to *yibbum*. The rationale is based on the fear that one of the surviving brothers will perform *yibbum*, and then the other brother may die. In that case, the second sister would be wholly exempt from *yibbum* or *ḥalitsah*: she would become forbidden to her brother-in-law because a man may not be married to two sisters. Obviously, this demonstrates that the fear of dying is a bona fide consideration.

One should not delay in the performance of a mitsvah

The *Tosafot yeshanim* reconciled these opposing views of death by noting the difference between a long period of time and a short one. Over a short period of time, as is the case with the *kohen gadol,* the likelihood of death is rare; over a long period of time, as in the case in *Yevamot,* it is more probable. *Tosafot* to *Yevamot* (18a) made the same distinction as did the *Tosafot yeshanim*, but never clarified what constitutes a long time. There are different opinions: Some suggest that more than seven days constitutes a long time, while others claim that thirty days is considered a long time (Talmudic Encyclopedia [Hebrew], Vol. 15, *Ḥeishinan le-mitah*:1). It appears that a person should never delay the performance of any commandment for more than seven or thirty days because of the fear that he might die prematurely.

One may legitimately argue that the commandment to procreate is essentially different from *yibbum*/*ḥalitsah*, and that the possibility of death need not be taken into

14. It would be inconceivable to suggest that the commandment to procreate has nothing to do with the raising and caring of the child.

account. In the *yibbum*/*halitsah* case, the death of one person would adversely affect another living person—i.e., the death of one brother would affect one of the sisters. Similarly, the kohen gadol would be affected by his wife's death. However, the commandment to procreate has no effect on another person. If a man dies before he fulfills this commandment, his death does not affect anyone else. Furthermore, his death exempts him from all obligations, as the Talmud says, "Once a person dies he is free from the commandments and absolved of all responsibilities" (BT *Shabbat* 151b). Consequently, a delay in procreation should not be subject to the consideration of possible death.

In a similar vein, Netsiv (*Mashiv davar* 1:41) addresses the issue of possible death and makes this very distinction with regard to the timing of the *megilah* reading on *Purim*. Netsiv rules that villagers who are permitted to read the *megilah* before the fourteenth day of Adar can delay its reading until the fourteenth, which is the preferred time. The chance of their premature death and consequent failure to perform the commandment is not considered, because their death would not affect others. Therefore, it is better that they wait for the preferred time rather than read at the merely allowable one.

However, there is a talmudic ruling concerning a *nazir* that seems to contradict Netsiv's position on the consideration of an early demise (Talmudic Encyclopedia [Hebrew], Vol. 15, *Haishinan le-mitah,* 6). The Talmud says (BT *Rosh ha-shanah* 6b) that if a person takes a vow and delays fulfilling it for approximately a year (actually, the passage of three festivals), he violates *lo te'aher* (the prohibition against delaying fulfillment of a vow). For example, someone who vows to donate a sacrificial offering to the Temple in Jerusalem is obligated to fulfill his vow within the year. If he fails to do so, he violates this prohibition. The Talmud further asserts (BT *Nedarim*3b), based on a biblical verse (Num. 6:2), that *lo te'aher* also applies to someone who vows to become a *nazir*, but the Talmud is hard-pressed to find a situation in which the aspiring *nazir* violates this prohibition. After all, once he says, "Behold, I am a *nazir*," he becomes a *nazir* immediately and any failure to observe the terms of *nezirut* constitutes a violation of the *nezirut* itself, not of *lo te'aher*. The Talmud finally states that the violation occurs if he says, "I will not leave this world without having been a *nazir* [and having fulfilled all its requirements]." Since a person is unaware of the day of his death, he must accept the *nezirut* immediately, and if he procrastinates for a year he will violate *lo te'aher* (Rosh, *Nedarim* 3b).

It appears that a couple may delay having children until a time when they will better be able to care for their children.

At first glance, this ruling appears to contradict Netsiv: It suggests that a person must consider the prospect of an early demise and not delay fulfilling a statute even though it affects no one but himself.[15] If this were true, however, one might expect that a person who vows to accept *nezirut* within two years should also be obliged to implement his *nezirut* immediately for fear of an early death. But Ran (*Nedarim* 3b) does not make this demand. He says that the consideration of an early death depends upon the formulation of the vow. If he vows, "I do not want to leave this world without having observed *nezirut*," the person is stipulating, as part of his vow, to fulfill this pledge during his lifetime, which is, of necessity, an unknown

15. His obligation to accept the *nezirut* immediately, explains Rosh, does not contradict the opinions of the *Tosafot* cited above, since the duration of time needed to fulfill *nezirut* is thirty days, which, according to Rosh, is considered a long time.

quantity. Therefore, he must consider his death no matter how remote the possibility. If he does not want to jeopardize his objective, he must begin his *nezirut* immediately, because a delay would constitute a violation of the actual vow. However, if he vows to accept *nezirut* within the next two years, he is not introducing the prospect of death into his vow and his vow will not be violated before the passage of the two-year period.[16] Consequently, he need not be concerned about the possibility of a premature death, since failure to heed the vow affects only himself and no one else.[17]

According to Rosh and Shulhan arukh, as understood by Maharikash, postponement is not a violation of the law.

Many rabbis, generally speaking, are opposed to contraception, but would grant a reprieve to a childless couple for a limited amount of time, generally three to six months. After that time the women are expected to stop using contraception or consult the rabbis once more for a dispensation. Yet, because the women are again embarrassed or fearful, they either avoid the rabbi and suffer ensuing guilt or they conceive a child whether they feel ready or not. Paradoxically, their initial submission to rabbinic authority creates a subsequent aversion to that same authority.

The rabbis are faced with an internal contradiction in their position: If they grant any dispensation to a childless couple, they are relying on the "lenient" interpretation of the law—apparently, they conclude that a delay is permitted. If so, they need not qualify their decision or limit its validity to an arbitrary period of time, whether three or six months.[18] On the other hand, if delay is forbidden, then no moratorium should be tolerated because no rabbi has the authority to permit that which is forbidden. He must find a halakhic basis for it. Presumably, the rabbis who issue temporary dispensations are functioning as pastoral/spiritual counselors who wish to encourage the couple to establish a faithful house in Israel. In that case, they should clarify their role to the couple, and tell them directly that they speak as spiritual advisors, rather than as halakhic decisors.

Many young couples are at this time struggling to reconcile the contradictory objectives of their education. They have been taught to develop their talents, pursue their education, and become self-sufficient financially and emotionally. On the other hand, they are taught humility and subordination to rabbinic

16. He would have to implement his vow within the first year because of *lo te'aher*.

17. Rabbi Herschel Schachter, in an article ("Halakhic Aspects of Family Planning"*)* in the *Journal of Halakha and Contemporary Society* (Fall 1982), posits that a delay in the commandment to procreate is forbidden. He bases this view on the following principles:

1. The *Hazon Ish's* conclusion that a delay in fulfilling a positive non-time-bound commandment is viewed as a temporary cancellation of the commandment.
2. *Zerizin maqdimin le-mitsvot*, the conscientious carry out the Torah's mandates expeditiously.
3. *Haishinan le-mitah*, we must consider the possibility of an unexpected early demise.
4. Maimonides' position (*Hilkhot Ishut* 15:1) that a delay in the fulfillment of the commandment to procreate is viewed as a violation of the law itself.
5. *Shulhan arukh's* conclusion (*Even ha-ezer* 76:6) that a postponement is forbidden.

While I have deep respect for Rav Schachter, I must respectfully disagree with his reading of the *Hazon Ish*. I believe the conclusion of the *Hazon Ish* is unequivocal to permit a delay. As far as the principle of *zerizin maqdimin le-mitsvot* is concerned, I have attempted to show that it does not apply if a delay would enhance the fulfillment of the commandment. The principle of *heishinan le-mitah* also does not apply with respect to the commandment to procreate, based on the ruling of the Netsiv. It is true that Maimonides does not permit a delay. However, I have attempted to show, based on the Maharikash, that the *Shulhan arukh* does not follow Maimonides' view and the citation from *Even ha-ezer* 76:6 is not necessarily positing that a delay is forbidden. I have elaborated on this last point in footnote 10.

18. I cannot find a legal source on which to base any specific amount of time during which a delay (for a childless couple) is permitted.

authority. At best, the couple is confused about the extent of their autonomous decision-making. The conflict is at once philosophical, theological, and psychological.

There is potential for grave harm in this situation. Young people experience great pressure to marry at an early age and are frequently overwhelmed by the combined pressures of marriage and parenting. Many mental health professionals I have consulted describe epidemic problems among young people who discover their identities and define their aspirations and values only after marriage. They too frequently feel trapped by an earlier decision, and often find their way to psychotherapists and sometimes divorce courts. The problem is much more poignant when there are children involved whom neither parent is prepared to care for. These tragic cases may contain a measure of harmful rabbinic enmeshment.[19]

There is considerable compatibility between halakhic precedent and psychological thinking.

In fact, there is considerable compatibility between halakhic precedent and psychological thinking. Young people who think that their concern for financial autonomy reflects a doubt in divine providence might draw comfort from the wisdom of the *midrash aggadah* that compares a poor person to one who is dead (BT *Nedarim* 64b, cited by Rashi on Exod. 4:19). On this point, the *Gur Aryeh* (on *Exod.* 4:19) explains that the desire for self-sufficiency and autonomy is innate. It is not a luxury for the select few or something to dabble in during one's spare time. It is essential in sustaining a wholesome and enriching life. Indeed, a person who fails in this endeavor is lacking a crucial dimension of life. In this view, an absence of concern for one's financial future is an expression of personal folly and not a testament to a higher faith.

Maimonides (*Hilkhot De`ot* 5:11) makes a similar point:

> It is the way of sensible people to obtain a job that will support them, then to buy accommodation and then to get married, for it is written, "Who has built a house and has not yet dedicated it? Who has planted a vineyard and has not eaten of it? Who has betrothed a wife and has not yet taken her?" Stupid people start by getting married, then buying a house if they can afford one, and then, towards the ends of their lives, try to find a job, or else support themselves by charity. It is written in the curses, "You shall betroth a wife and another man shall lie with her; you shall build a house but shall not dwell in it; you shall plant a vineyard but shall not gather its grapes." This is to say that if one's actions are in the wrong order one will not be successful.

In this light, even though Maimonides believes a man should marry by the age of twenty, he must first obtain a degree of financial security. If, however, he has not yet achieved this, then he may (or perhaps should) delay marriage. And since a fundamental objective of marriage is procreation, it is quite reasonable to assume that just as financial security is an important prerequisite for marriage, so too should it be for starting a family. Therefore, since young

19. At times, the woman does not reveal to the rabbi the full dimension of her predicament. To illustrate how this could result in unintended harm I would like to present the following clinical example. A psychotherapist related to me the case of a childless nineteen-year-old married woman who suffered from an obsessive-compulsive disorder and severe depression. She consulted a rabbi for permission to practice birth control. The rabbi, apparently unaware of the severity of her disorder, made his decision solely on the basis of his concern for the health of the fetus: Since her medication might harm the fetus, she could use contraceptives as long as she required the medication. At that time, she was also being treated by a psychotherapist who recognized the larger personality issues of her illness: She was emotionally immature and terrified at the prospect of bearing and raising children. The therapeutic goal was to wean her from her medication and prepare her for the challenges of motherhood. Meanwhile, the patient knew that she could delay childbearing only as long as she took the medication and she consequently refused to alter her drug regimen. In light of the rabbi's decision, she stymied the therapy and subverted its goals.

couples today are marrying while pursuing an education and profession, delaying procreation is a valid and logical consideration.

The need for rabbinic restraint in marital matters is supported by weighty halakhic precedent. Rivash was questioned (Responsa, 15) about the permissibility of performing a marriage between a man who had not yet fulfilled the commandment to procreate and an elderly wealthy woman beyond the years of reproductive capacity. The young man sought financial security and the woman desired a companion, but the community resolved to stop the marriage and consulted Rivash. His response provides the basis for future decisions. He replied that the community did technically have the right to compel the young man and prevent the marriage. However, the practice has been for many generations not to coerce marriage or object to one. In his pithy phrase, "the sages of past generations hid their eyes when it came to marital matters," even if the couple's actions were forbidden so long as the marriage itself was not illegitimate. He further states that rabbinic coercion could lead to arguments and legal battles, and that the rabbinic function with regard to marriage should be limited exclusively to adjudicating disputes between husband and wife.

Based upon this ruling, Rama (*Even ha-ezer* 1:3) limits the role of rabbinic courts in matters of marriage. Although the *Shulḥan arukh* states that the courts should coerce a man to marry at the age of twenty, Rama claims that we no longer adhere to such a policy. Even if someone who has not fulfilled the commandment to procreate wants to marry a woman who is incapable of having children, the established practice has been not to interfere. Likewise, a man who has been married for ten years and remains childless should not be pressured to divorce his wife.[20] This, concludes Rama, should be the established policy in all matters of marital relationships. Certainly then, according to Rama, this policy should be adhered to in marital matters of behavior that the *halakhah* itself does not prohibit!

The need for rabbinic restraint in marital matters is supported by weighty halakhic precedent.

We must apply the decisions of past generations to the contemporary scene. Young people are marrying at a young age, frequently when they are still psychologically immature and emotionally insecure. Furthermore, they must advance in a culture that requires a long apprenticeship in graduate study or otherwise before they are financially self sufficient. As rabbis, we must maintain our role as facilitators of their growth, and allow them the latitude to make decisions based upon needs that are unique to each couple and that only they can know. We must accept the fact that we cannot know the deepest motives that impel young people to turn to us for permission to delay procreation. Nor are we qualified to discern the nuance of such blanket terms as "anxiety" and "marital jitters"; one person's mild apprehension may be another's insurmountable emotional torment. Following Rama, it may be that we best serve our young people by granting them the opportunity to decide when they are ready for the noble task of parenthood. Perhaps what is required is less their faith in us than our faith in them.

20. According to *halakhah* (BT *Yevamot* 64a), he would be required to divorce her.

REVIEW ESSAY

Transforming Identity: The Ritual Transformation from Gentile to Jew—Structure and Meaning by Avi Sagi and Zvi Zohar

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Meorot 8
Tishrei 5771
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A Publication of
Yeshivat Chovevei Torah
Rabbinical School

Transforming Identity: The Ritual Transformation from Gentile to Jew—Structure and Meaning
by Avi Sagi and Zvi Zohar (London & New York, 2007)

Marc Shapiro

In 1911 R. Zvi Hirsch Grodzinski published an open letter[1] to rabbis all over the world, asking them to offer their opinions on the following problem: A young man has fallen in love with a non-Jewish woman and the man's parents are insisting that the woman convert. Yet it is obvious to all that the Gentile woman has no interest in Judaism and will not observe any of the commandments.

Grodzinski tells us that in the past he never accepted these types of converts. Yet eight years prior to this, R. Jacob David Wilovsky (Ridbaz) had been staying with him, and one such potential convert came to Grodzinski. Wilovsky at first wished to accept her. However, after Grodzinski showed him halakhic authorities who rule that *ab initio* such converts should not be accepted, and that it is questionable if the conversion is valid even *ex post facto*, Ridbaz agreed that one should not convert these people.[2]

Knowing that Grodzinski would not convert her, the young woman who is the subject of his letter went to the local *shohet*. He was more amenable and found two others to make a *beit din* which then performed the conversion. Grodzinski asks, is the conversion valid *ex post-facto*?

Grodzinski was an outstanding talmudist and halakhist, some might say the most outstanding in the United States. Although he personally believed that conversions without real intention are invalid even *ex post facto*, he recognized that there is ambiguity in the traditional sources on this point,[3] which is why he wanted to hear what other rabbis thought about the issue.[4]

The first one to respond was a well-respected Hungarian rabbi, R. Yehezkel Baneth.[5] In his opinion, the conversion of one who has no intention of following the Torah is absolutely binding. Baneth notes that there are different positions expressed in rabbinic literature, but Maimonides rules:

> A proselyte whose motives were not investigated, or was not informed of the commandments and the punishment for transgressing them, but was circumcised and immersed in the presence of three laymen, is a proselyte.[6]

1. See *Ha-me'asef*, 5671, vol. 2, no. 20, pp. 20a-23b.
2. Reflecting how often rabbis have been "burnt" by converts, R. Jacob Kantrowitz writes as follows (in R. Joseph Avigdor Kessler, *Tif'eret yosef* [New York, 1943], p. 7):
ולפי שרע עלי מעשה הגירות בכלל, קשה עלי להרבות דברים בזה, ואך שהדר"ג כתב שזה המעשה נעשה אצל רב מובהק, אני אומר, כי רב מובהק אין לו עסק בענין זה של גירות, ואם כי בגמ' אמרו קשים גרים לישראל, הנה זה ביותר קשה לרבנים.
3. To give just one example (which is not mentioned by Grodzinski), Maimonides states that even though the wives of Solomon never intended to give up their idolatrous worship, their conversions were still valid. See *Hilkhot Issurei bi'ah* 13:16-17. For a unique understanding of Maimonides' view, see R. Ahron Soloveichik, "*Be-inyan gerut*" [Regarding Conversion], in Moshe Sherman, ed., *Kevod ha-Rav* (New York, 1984), pp. 20-25.
4. See R. Moses Feinstein, *Iggerot mosheh, Yoreh de`ah*, vol. 1, no. 157, which is sent to a great scholar who was in doubt about this issue (called to my attention by R. Chaim Rapoport).
5. *Ha-me'asef*, 5671, vol. 2., no. 57, pp. 61b-63a, no. 73, pp. 78b-79b. Baneth was the grandson of R. Solomon Ganzfried.
6. *Hilkhot Issurei bi'ah* 13:17.

Baneth sees it as obvious that there can be no acceptance of *mitsvot* without being informed of them (more on this later). Yet Maimonides rules that a convert who knew nothing of the *mitsvot* is still a valid convert. According to Baneth, this means that even if one doesn't accept the *mitsvot*, as long as he goes through the proper halakhic procedure the conversion takes effect.

Baneth brings another proof for this perspective from an earlier *halakhah* in the *Mishneh torah*. Here Maimonides states that a prospective convert who has been circumcised but not immersed, or immersed but not circumcised, is not regarded as a convert until the missing element is completed.[7] Yet Maimonides doesn't say anything about accepting the commandments or about the *beit din* determining that the commandments will be observed. "From here we see that lack of acceptance of the *mitsvot* and observance of the Torah do not prevent one from becoming a convert, *ex post facto*." The best possible way of converting someone is set out by Maimonides,[8] where he speaks of informing the potential convert of the commandments, yet *ex post facto*, even without such informing and acceptance, the conversion is still valid.

In the following issue of *Ha-me'asef*, R. Jacob Schorr's responsum was printed, and he comes to the exact opposite conclusion. He felt that the woman, who never had any intention of observing *mitsvot*, is not to be regarded as a convert, even *ex post facto*.[9] It is not my intention here to go into the argument in any detail. I cite this dispute only in order to show that, contrary to what many today would like us to believe, the issues we are dealing with are hardly clear-cut, and great scholars have come down on different sides of the issue.

Maimonides rules that a convert who knew nothing of the mitsvot is still a valid convert.

In fact, as Avi Sagi and Zvi Zohar note, in their challenging new book on the subject of conversion, R. Abraham Isaac Kook comes down on both sides of the issue. In one responsum he states that the only thing that matters is that the conversion be carried out properly. What someone is thinking at the time is irrelevant and cannot void the halakhic act of conversion. Yet in another responsum he takes the exact opposite position.[10]

Sagi and Zohar analyze other important opinions on this topic, as well as a number of additional issues related to conversion. While the "stringent" views have become quite well known in the last few years,[11] this is not the case with the "lenient" opinions, that is, those that do not make conversion contingent on complete halakhic observance. In this regard, Sagi and Zohar are particularly valuable. I too provided a number of additional "lenient" sources in a blog post.[12]

7. Ibid. 13:6, 14:1-5.
8. Ibid., 13:14.
9. *Ha-me'asef*, 5671, vol. 2, no. 72, pp. 75b-78b.
10. pp. 226-227, 232 n. 17.
11. Despite all the news about the "stringent" position, and the problems it has caused for converts, I am unaware of any adherent of this position who has explained what it actually means to declare that converts must adhere to complete halakhic observance or else the conversion is of no value. It is very easy to say that a convert who violates *shabbat* the day after his conversion is not a valid convert. However, what about a convert who speaks *lashon ha-ra* the day (or hour) after his conversion? Is this conversion also rendered invalid? Are converts not allowed to sin like other Jews, without worrying about the status of their conversions?
12. See www.seforim.blogspot.com, Aug. 28, 2009. Some additional sources not mentioned in Sagi and Zohar nor in my blog post are R. Hezekiah Shabtai, *Divrei hizqiyahu* (Jerusalem, 1989), *Yoreh de`ah*, no. 1; R. Moses Rosen's responsum in R. Joseph Avigdor Kessler, *Tif'eret yosef* (New York, 1944), vol. 2, no. 13 (and see Kessler's responsum, ibid., no. 14); R.

Let me now also refer to one further important source, which is a responsum of R. Naphtali Zvi Judah Berlin. Berlin was a very important decisor. Yet in all of the heated discussions about voiding conversions and what is required for a convert in terms of *qabbalat ha-mitsvot* (acceptance of the commandments), no one has mentioned Berlin's responsum, which appears in *Meshiv davar*, vol. 5, no. 46.[13] Berlin states that while it is forbidden to convert someone who does not undertake to perform the *mitsvot*, if such a conversion is carried out it is nevertheless valid. The reason for this is that *qabbalat ha-mitsvot* is not required *be-di-avad* (*ex post facto*).[14]

What this means is that no otherwise valid conversion can be voided, since as long as circumcision and immersion were performed in a proper fashion, the fact that in reality the convert never accepted the commandments does not affect the conversion's validity. Significantly, Berlin is referring to when there was no *qabbalat ha-mitsvot* whatsoever, and yet he still declares the conversion valid.[15] The situation that is so common today is actually much less problematic than that dealt with by Berlin. That is because the current controversy revolves around conversions that indeed included formal *qabbalat ha-mitsvot*, yet questions were later raised about whether the acceptance had been authentic.

Abraham Price, *Mishnat avraham* on *Sefer ḥasidim* (New York, 1960), vol. 2, p. 236, vol. 3, p. 63; R. Ḥayyim David Halevi, *Aseh lekha rav* (Tel Aviv, n.d.), vol. 3, pp. 134-135; R. Eliezer Berkovits, *Not in Heaven* (New York, 1983), pp. 108ff.; R. Ovadiah Yosef, *Masa ovadyah* (Jerusalem, 2007), pp. 441-442; R. Moshe Malka, *Miqveh ha-mayim* (Jerusalem, 1984), vol. 5, p. 83, *Ve-heshiv mosheh* (Lod, 1994), no. 71; R. Yigal Ariel, "*Giyyur olei berit ha-mo`atsot*," *Teḥumin* 12 (1991), pp. 81-97; R. Moshe Tsuriel, "*Giyyur ha-olim me-rusiyah*," *Iturei kohanim* 67 (Tishrei 5751), pp. 34-37; R. Moshe Horev, "*Din gerut ha-olim ha-ḥadashim ha-ba'im me-erets tzafon (rusiyah)*," *Va-ya'an shemu'el* 3 (2000), pp. 218-221; R. Shlomo Goren's letter in *Teḥumin* 23 (2003), pp. 180ff.; R. Mordechai Yehudah Krauss, "*Be-inyan gerut beli qabbalat mitsvot amitit u-le-aḥar zeman hitḥil lishmor mitsvot*," *Mi-beit levi* 18 (2005), pp. 196ff.; R. Nachum Eliezer Rabinovitch, *Siaḥ naḥum* (Ma'aleh Adumim, 2008), no. 69. See also R. Moses Feinstein, *Iggerot mosheh, Yoreh de`ah*, vol. 1, nos. 159-160, that many rabbis accepted converts who did not intend to observe the *mitsvot*. (R. Feinstein disagreed with this approach, but on account of the other rabbis would not publicly protest.) One of these rabbis was R. Jacob Meskin. See *Even ya`aqov al masekhet ḥagigah* (New York, 1944), p. 108 (emphasis added):

ולכאורה כיון דפסק הרמב"ם דין קבלת המצות מעכב בדיעבד, א"כ אם אינו מקבל מצוה אחת לא גרע מאלו לא קבל כלל . . . ע"כ צ"ל דאם לא קבל כלל ומל וטבל הוי גר דאינו מעכב אבל אם קבל שאר מצות ופירש בפירוש שאינו מקבל מצוה אחת התם גרע מסתמא, ועוד י"ל דכיון דמל וטבל לשם גירות הוי כאילו קבל כל המצות ולא הוי מחוסר קבלה דסתמא לשמא קאי, אבל אם אמר בפירוש שלא לשמו פסול, כמו"כ גבי גר נמי הכי דבפירש שאינו מקבל גרע מסתמא דודאי קבל עליה. ויש שרוצים לומר דכיון שאינו משמר את המצות לאחר מילה וטבילה וקבלת המצות הוי כאילו אינו מקבל את כל המצות, ואמנם הקבלה היתה על כל המצות ואח"כ כשאינו משמר את המצות הוא נענש על זה כמו ישראל גמור מבן ומלידה שנענש על שאינו שומר מצות התורה אבל בעת מעשה מקבל על עצמו ליכנס תחת כנפי השכינה דהא מניח את עצמו למול לשם גירות ומקבל להיות יהודי גמור לאלקיו ולתורתו ולעם ישראל, ולכך מהני.

The sentiments expressed by Meskin were shared by many *poseqim*.

For a justification of converting people even if you know that they will not observe the *mitsvot*, see R. Zvi Magence, "*Be-inyan gerim ve-gerut*," *Or ha-mizraḥ* 38 (1991), pp. 257-258. According to R. Avraham Avidan, willingness to observe "most of the *mitsvot*" is sufficient to validate a conversion. See "*Be-inyan gerut*," *Torah she-be-al peh* 32 (1991), p. 94. See also R. Ezra Batzri, *Sha`arei ezra* (Jerusalem, 2003), vol. 2 p. 433 (emphasis added):

הכל תלוי בהשערת הדיינים באופיו של האיש . . . וכך נוהגים בבתי הדין בארץ לגייר אפילו כשיודעים שהסיבה לכך היא נישואין . . . שאם רואים בית-דין שסופו לקיים את תרי"ג מצוות לשם שמים, אף שעכשיו אינו לשם שמים, כיון שסופו יהיה לשם שמים יכולים לגיירו.

13. This last volume of *Meshiv davar* only appeared in 1993. While it is now published together with the other volumes, it is not part of everyone's library, especially those who already have the classic four-volume set. Some may even be unaware of its existence.

14. In this responsum he raises the possibility that according to the Tosafists, this principle is no longer applicable. Yet he rejects this approach and asserts that according to Alfasi and Maimonides, acceptance of the commandments is not required in order for a conversion to be valid.

15. See Sagi and Zohar, p. 215, where they cite R. Solomon Kluger who states that acceptance of the commandments is a rabbinical injunction, and that even without *qabbalat ha-mitsvot* the conversion is binding according to the Torah.

Throughout the conversion controversy, the issue that everyone focused on is the concept of *qabbalat ha-mitsvot* ("acceptance of the commandments"), and what this requires in order for the conversion to be valid. This is also a major theme in the book under review, since Sagi and Zohar argue that according to one approach recorded in the Talmud, what they term the "*Yevamot* paradigm," *qabbalat ha-mitsvot* is not a requirement at all. The *Yevamot* paradigm is about joining Jewish society in a kinship sense, and circumcision and immersion accomplish this, with nothing else being required. They distinguish this from the "*Demai* paradigm," referring to *Tosefta Demai* 2:5,[16] which is explicit that a convert must take it upon himself to perform the mitsvot of the Torah.

The notion that there could be different views in early rabbinic literature on a matter such as this should not be surprising. Yet the novelty of Sagi and Zohar is their claim that not only is this dispute not settled in the Talmud, but the two positions can be identified, advocated by different authorities, up until the *Shulḥan arukh*. They further assert that one can even identify these positions in the post-*Shulḥan arukh* era.

A further significant claim of Sagi and Zohar is that the nineteenth-century R. Yitzhak Schmelkes is the first halakhic authority to hold that "acceptance of the commandments means subjective intent to perform them" (p. 234). Can it be that something that is taken for granted by pretty much all halakhic authorities today is actually a relatively recent notion? This is one of the big questions that the reader must confront in this very ambitious book. It is, to be sure, not always an easy text to follow, as there is a good deal of detailed analysis. Fortunately, the authors provide summaries, and readers do not need to grasp all of the halakhic particulars in order to understand the authors' main points.

The controversy revolves around conversions that included qabbalat ha-mitsvot, yet questions were later raised about whether the acceptance had been authentic.

The book was written before the recent controversy regarding voiding of conversions, but anyone who had read the book would not have been surprised by what has been going on. That is because the authors cite examples of cancellation of conversions before the famous cases that hit the news. In fact, in some ways events have moved beyond what the authors deal with, and beyond what anyone could even have imagined a few years ago. Thus, in discussing child conversion they note that none of the talmudic sages who deal with this "require any positive act or statement by the young proselyte to validate the *giyyur* he underwent as a minor. Not only is he not required to take upon himself 'the yoke of the commandments,' he is not even required to express his wish to be a Jew" (p. 154). Yet we are now hearing of *batei din* with a different outlook. These *batei din* reportedly hold that when the proselyte reaching the age of majority is not observant, the conversion is invalidated.

This approach goes against what has always been the standard procedure when it comes to child conversion, that, barring an active protest upon reaching majority, the conversion remains binding. The new approach would literally deny non-Orthodox Jews the right to have their adopted children convert to Judaism. What this means in the State of Israel is that all adopted children of the non-Orthodox would be regarded as Gentile, and it is hard to imagine a greater disaster for the Jewish community than this.

16. This *Tosefta* is quoted in B.T. *Bekhorot* 30b.

An important element of Sagi's and Zohar's thesis is as follows: "We hold that one cannot assume rabbinic consensus on the basic requirements of *giyyur*; requirements not mentioned in a text cannot be regarded as having been so 'self-evident' or 'obvious' as to require no mention" (p. 114 n. 1). Thus, when a rabbinic text does not mention anything about the need for acceptance of the commandments, it is because according to this text, there is no such necessity.

It is hard to imagine a greater disaster for the Jewish community than this

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Another central feature of the book is charting the development of conversion requirements. Rather than summarize the argument, let me quote a passage that lays it out very clearly:

> [A] transformation has taken place in which "for the sake of Heaven" no longer refers to a religious state of mind or belief, but to a serious commitment to religious praxis. The fact that this transformation first occurred in late nineteenth-century Europe is understandable: at that time, alternate modes of Jewish religious praxis had emerged as well as secular lifestyles.... In this context, it seemed insufficient for a proselyte to be motivated "merely" by sincere belief: it was imperative that she identify with the one and only correct form of Judaism, an identification that could be verified not by belief but only by praxis (p. 90).

Once it can be shown that real commitment to observance of mitsvot was not a necessity for conversion until recent times, this opens the door to liberalizing conversion requirements in our own day, an important subtext of Sagi's and Zohar's book.

Yet Sagi and Zohar are not always convincing in their arguments. For example, they quote R. Eliezer's opinion that if a proselyte was circumcised but did not immerse, he is Jewish.[17] The authors derive from this that circumcision "is noted as the sole ritual for a male proselyte" (p. 117). However, the source under discussion doesn't say this at all. Rather, it is speaking *ex post facto*, that if a convert was circumcised but did not immerse, that the conversion is still valid. The fact that immersion is also mentioned shows that as a general rule, this text does not regard circumcision as the "sole ritual." What makes their formulation all the more surprising is that on the very next page Sagi and Zohar acknowledge that, *ab initio*, R. Eliezer holds that "immersion should be part of the *giyyur* ceremony also for men" (p. 118).

Another example of what I believe to be a misreading relates to JT *Qiddushin* 4:1.

> One who underwent *giyyur* for the sake of love, either a man because of a woman or a woman because of a man, and so too those who did so for the sake of a royal table, and lion proselytes, and the proselytes of Mordecai and Esther, are not to be accepted. Rav said: The *halakhah* is that they are proselytes, and they are not to be rejected in the manner that [potential] proselytes are rejected *ab initio*. Rather, they must be accepted and kindly welcomed, since they may have become proselytes for the sake of Heaven.

Sagi and Zohar (pp. 11-12) understand both the first, anonymous, opinion and Rav to be in agreement that the conversion is valid. They interpret the first opinion's conclusion—"are not to be accepted"—to mean that these converts should not be permitted to marry into a Jewish family. This is an incredibly farfetched reading, and I don't know of any commentaries

17. J.T. *Qiddushin* 3:12.

that adopt it. The simple meaning of the passage is that the first opinion does not accept the conversion, even *ex post facto.*

Sagi and Zohar also claim that the final words of Rav, "since they may have become proselytes for the sake of Heaven," do not intend "to make the validity of the *giyyur* contingent, but to stress the obligation to welcome such proselytes and accept them into the community" (p. 17 n. 16). Although Sagi and Zohar do not note this, their reading can be supported by R. Joshua Benveniste's understanding of the text. He claims that even though these people did not convert for the sake of Heaven, perhaps later they will come to this.[18] In the meantime, they are regarded as valid converts despite their intention at the time of conversion.

Yet this reading is very difficult to put into the words of the text. After all, Rav explains that the conversion is valid because perhaps they really did convert for the sake of Heaven. Yet this raises its own problem, since how could Rav say this when the Talmud explicitly tells us that the people did not convert for the proper reasons? In fact, in the parallel text, BT *Yevamot* 24b, the explanation that perhaps they converted for the sake of Heaven is lacking from Rav's statement. What this presumably means is that it is not part of Rav's original teaching but is an addition of a later *amora* seeking to explain how Rav could validate a conversion that was done for inappropriate reasons.

R. Gedaliah Felder explains Rav's opinion to be that although the court should not have converted such people originally, once the conversion is carried out we act on the assumption that the convert had at least some small intention for the sake of heaven.[19] Even R. Eliezer Berkovits, whose liberal position on conversion is well known, concludes that Rav's opinion means that "perhaps they converted properly and we must draw them close."[20]

Both Felder and Berkovits assume, and I think correctly, that the only reason the conversions are recognized *ex post facto* is due to the assumption that there was at least some element of proper intention on the part of the converts. This stands in opposition to Sagi's and Zohar's claim that Rav's opinion assumes "that the motivations of a proselyte are inconsequential as far as the *ex post facto* validity of a *giyyur* is concerned" (p. 11).

The reason the conversions are recognized ex post facto is the assumption that there was some element of proper intention.

Let me note another example where Sagi and Zohar are off-target. The passage in the Jerusalem Talmud mentioned above is parallel to a passage in BT *Yevamot* 24b: "R. Nehemiah used to say: Lion proselytes, dream proselytes, and the proselytes of Mordecai and Esther are not considered proselytes. . . . R. Isaac b. Samuel b. Marta said in the name of Rav: The *halakhah* is in accordance with the opinion of him who maintains that they were all proper proselytes." There are some differences between the traditions quoted in the Jerusalem and the Babylonian Talmud. (One such difference was noted above.) Sagi and Zohar see great significance in the fact that the BT *Yevamot* text says that lion proselytes etc. "are not considered proselytes," while JT *Qiddushin* says that "they are not to be accepted." As mentioned above, Sagi and Zohar understand

18. *Sedeh yehoshu`a* (Constantinople, 1754), ad loc.
19. *She'elat yeshurun* (New York, 1988), pp. 116-117: שבמקצת היתה כוונתו לשם שמים. Yet Felder also states that even when we know with certainty that the convert does not intend to be observant, the conversion is still valid *ex post facto*. Thus, *le-shem shamayim* need not be identical with intent to observe *mitsvot*.
20. "*Berurim be-dinei gerut*," *Sinai* 77 (1975), p. 36.

"not to be accepted" to mean that we do not intermarry with them. Yet this is most unlikely, and as noted by R. Joshua Benveniste,[21] the first, anonymous, opinion in JT *Qiddushin* is in fact identical to the opinion of R. Nehemiah quoted in BT *Yevamot*.

As for the word "accepted," this is used in many other places in the Talmud, and as far as I can tell, it never means what Sagi and Zohar claim it means here. In fact, right after offering their interpretation they quote another passage in BT *Yevamot* 24b: "No proselytes will be accepted in Messianic times." This means exactly what it says, and there is no reason to assume anything different elsewhere. And what about *Tosefta Demai* 2:5, which is so central to this book? The *Tosefta* reads: "A proselyte who took upon himself all matters of Torah, excepting one thing, they don't accept him." In all these cases "accept" means "accept for conversion," not "accept for marriage."

Despite these reservations, I would also like to defend the authors from some recent criticism. Michael J. Broyde and Shmuel Kadosh have recently reviewed this book and were extremely critical, seeing it as without any merit.[22] I agree that many of Broyde's and Kadosh's points are valid. For example, while Sagi and Zohar refer to the different approaches of the texts in *Yevamot* and *Tosefta Demai*, and how these different approaches continued in the post-talmudic period, I think that Broyde and Kadosh are correct that such a supposed major disagreement between *sugyot* would have been noted by the earlier authorities. Since they do not, it implies that, contrary to Sagi and Zohar, they do not see the two texts in tension. I think it is best to assume that the *rishonim* viewed *Yevamot* and *Tosefta Demai* not as contradictory texts, but as texts with different emphases that could be harmonized in some way. For example, one could argue that the *Tosefta Demai* text, which insists on acceptance of all the *mitsvot* before being converted, is only speaking *le-khathilah* (*ab initio*).

Would Broyde and Kadosh have been so dismissive of Sagi's and Zohar's understanding if they knew the good company they were in?

Yet I also think that Broyde and Kadosh have gone overboard in some their criticisms. To give one example, they criticize the authors for stating that R. Joel Sirkes (known as the *Bah*) holds that according to Maimonides, *ex post facto* a conversion is valid even without acceptance of *mitsvot*.[23] I do not wish to enter into the dispute *per se*, other than stating that while the reading of the *Bah* put forward by Broyde and Kadosh can be defended, it too is not without difficulties. Yet Broyde and

21. *Sedeh yehoshua*, ad loc. See also R. Aryeh Leib Yellin, *Yefeh einayim*, *Yevamot* 24b; R. Shemariah Menasheh Adler, *Geulat yisrael* (London, 1950), p. 26.
22. *Tradition* 42 (Summer 2009), pp. 84-103.
23. Ibid., p. 88-89. See *Bah*, *Yoreh de`ah* 268, s.v. *u-le-inyan*. There is a problem with the way Sagi and Zohar quote the *Bah*, in that they make it seem as if there is no ambiguity in his opinion (p. 170): "Our master Maimonides wrote that the *giyyur* is valid even if it was totally lacking in intent to accept the commandments." Yet the words of the *Bah* are as follows:

אע"פ דכתב הרמב"ם [פי"ג הי"ז] דכשר אע"פ שלא היה לשם קבלת מצות

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As the reader can see, the word *giyyur* does not appear in the *Bah*. This version comes from the standard edition of the *Tur*. The *Makhon yerushalayim* edition substitutes היתה for היה. (I follow R. Yehudah Herzl Henkin, "*Al af she-niglah sodan*," *Ha-tzofeh*, July 6, 2008, in assuming that לשם should be read as *le-sham*, a form used often by the *Bah* and which is no different than שם.)
The following is how the second part of the sentence appears in Sagi's and Zohar's earlier Hebrew version of their book (*Giyyur ve-zehut yehudit* [Jerusalem, 1997], p. 104 n. 28):

דכשר [הגיור] אע"פ שלא היה לשם קבלת מצות

If one assumes, as do Broyde and Kadosh, that the bracketed word should be הטבילה, only the *Makhon Yerushalyim*

Kadosh make it appear that Sagi and Zohar have made an egregious blunder in their understanding of the *Bah*.

Fairness requires pointing out that if Sagi and Zohar are mistaken in their understanding of the *Bah*, they are in good company. No less a figure than R. Ovadia Yosef states the exact same thing, namely, that according to the *Bah*, Maimonides does not require acceptance of the commandments for a conversion to be valid.[24] This position is also shared by R. Solomon Lipshitz,[25] R. Solomon Drimer,[26] R. Moshe Yonah Zweig,[27] R. Bezalel Zolty,[28] R. Elijah Schlesinger,[29] R. Shilo Raphael,[30] R. Shear Yashuv Cohen,[31] R. Yaakov Rosenthal,[32] R. Yitzhak Ralbag,[33] R. Yaakov Ariel,[34] R. Pinhas Toledano,[35] R. Elijah Abergel,[36] R. Shlomo Dichovsky,[37] R. Yehudah Herzl Henkin,[38] R. Moshe Tsuriel,[39] R. Binyamin Riemer,[40] and Menachem Finkelstein.[41]

Would Broyde and Kadosh have been so dismissive of Sagi's and Zohar's understanding if they knew the good company they were in? Despite the fact that I acknowledge that the reading of Broyde and Kadosh appears to be viable, I must also state that with two exceptions,[42] I have not found their understanding in any traditional source, and as mentioned above, it too has difficulties.[43] In fact, virtually all sources that discuss the *Bah* assume, without any discussion needed, that the reading adopted by Sagi and Zohar is the

23. (con't) version **(**שלא היתה לשם קבלת מצות**)** makes sense. Yet the first printing of the *Bah*, which appeared in Cracow 1735, has היה, and this can only refer to a masculine word such as *giyyur*. The *Makhon Yerushalayim* version of the *Bah* is based entirely on the first printing, without any use of manuscripts. In other words, by replacing היה with היתה the editors have corrected what they believe to be a printer's error. They came to this assumption no doubt because they shared Broyde's and Kadosh's understanding of the passage. Unfortunately, they do not tell the reader about this emendation, and as the *Makhon Yerushalayim* version becomes the standard edition, future readers, whose texts are missing the crucial word היה, will have difficulty understanding how so many great scholars assumed that the *Bah* understood Maimonides to mean that conversion without *qabbalat ha-mitsvot* was valid.

24. *Masa ovadiah* (Jerusalem, 2007), p. 432.

25. *Hemdat shelomoh* (Warsaw, 1836), *Yoreh de`ah,* no. 29.

26. *Beit shelomoh* (Jerusalem, 2006), *Orah hayyim*, no. 113.

27. *Ohel mosheh* (Jerusalem, 1960), second series, no. 64 (p. 119). Zweig even states that according to R. Joseph Karo, *qabbalat ha-mitsvot* is not required *be-diavad*. See ibid., p. 120.

28. *"Be-dinei qabbalat gerim," Torah she-be-al peh* 13 (1971), p. 37.

29. *She'eilot u-teshuvot sho'alin ve-dorshin* (Jerusalem, 1997), vol. 2, no. 47 (p. 376). Unfortunately, much of this responsum is lifted word for word from Zolty's article, referred to in the previous note.

30. "*Giyur le-lo torah u-mitsvot*," *Torah she-be-al peh* 13 (1971), p. 127.

31. "*Ger she-hazar le-soro ve-she-eino shomer mitsvot*," *Torah she-be-al peh* 29 (1988), p. 36.

32. "*Be-hilkhot gerut*," *Moriah* 2 (1970), p. 28.

33. "*Qabbalat mitsvot be-gerut*," *Torah she-be-al peh* 39 (1998), p. 67.

34. *Be-ohalah shel torah* (*Kefar Darom*, 1999), vol. 2, p. 104.

35. *Berit shalom* (Jerusalem, 2006), vol. 1, p. 295.

36. *Dibrot eliyahu* (Jerusalem, 2009), no. 59.

37. *Piskei din shel batei ha-din ha-rabaniyim be-yisra'el*, ed. Dov Katz, vol. 10, p. 198.

38. "On the Psak Concerning Israeli Conversions," *Haqirah* 7 (2009), pp. 19-20.

39. "*Giyyur ha-olim me-rusiyah*," p. 35.

40. "*Be-sugya de-ger qatan u-ve-din zakhin le-adam she-lo be-fanav*," in *Zera berakh* (Jerusalem, 2002; memorial volume for R Barukh Shimon Schneersohn), p. 308.

41. *Conversion: Halakhah and Practice* (Ramat Gan, 2006), p. 185-186.

42. R. Yoel Kluft, *Da'at yo'el* (Haifa, 1991), p. 354; R. Gedaliah Axelrad, "*Be-dinei gerut*," *Hadar ha-karmel* (Haifa, 1983), p. 48, *Migdal tsofim* (n.p, n.d), vol. 1, p. 117. Broyde and Kadosh, p. 100 n. 6, claim that their reading is also reflected in *Entsiqlopediyah talmudit*, s.v. *gerut*, at text accompanying note 233. Yet this is incorrect, as is made clear by note 233:
ב"ח שם לד' הרמב"ם . . . ונ' שאינו מחלק בין הודעת המצוות לקבלת המצוות. וכ"נ מריטב"א כתובות יא א ושמ"ק שם בשמו ובשם שיטה ישנה שאין הודעת המצוות וקבלתם מעכבות בדיעבד.

43. Probably the major difficulty is how to explain the underlined passages, according to Broyde's and Kadosh's reading:
אע"פ דכתב הרמב"ם [פי"ג הי"ז] דכשר אע"פ שלא היה לשם קבלת מצות כל עיקר מיהו התוספות והרא"ש חולקין ע"ז דקבלת המצות ודאי מעכבת והכי נקטינן דאין משיאין אותו אשה עד דיקבל עליו המצות בפני שלשה.

correct one. Confronted with such a mass of great rabbinic figures who read the *Baḥ* in the very same way Sagi and Zohar read it, the typical reader, and I include myself in this category, should feel confident in assuming that in this example, at least, it is Sagi and Zohar, not Broyde and Kadosh, who get it right.[44]

I also think that one can challenge a fundamental point made by Broyde and Kadosh in their critique. They assume that there is a distinction between *hoda`at ha-mitsvot*, which is informing the potential convert of the commandments, and *qabbalat ha-mitsvot*, which means acceptance of the commandments. This logical distinction is crucial for their argument and it makes a good deal of sense. This distinction has also been made by a number of *aḥaronim*.

The problem, however, is that there is no evidence that the *rishonim* referred to by Sagi and Zohar shared this assumption. As far as I can tell, none of the *rishonim* make a distinction between *hoda`at ha-mitsvot* and *qabbalat ha-mitsvot*; rather, they use *hoda`at ha-mitsvot* as a form of shorthand to also include *qabbalat ha-mitsvot*. This leads me to conclude that when the *rishonim* speak about a convert who was never informed of the commandments, and that *ex post facto* the conversion is still valid, this means that the convert *never accepted* the *mitsvot*.

Broyde and Kadosh make it seem that Sagi and Zohar have committed a terrible blunder, and that their identification of *hoda`at ha-mitsvot* and *qabbalat ha-mitsvot* is almost a child's mistake. Yet the truth is that Sagi's and Zohar's understanding is taken for granted by numerous traditional commentators and

44. One other error made by Broyde and Kadosh is their statement that until the writings of R. Uziel, "there is not a single halakhic authority who states that *kabbalat ha-mitzvot* is not necessary" (p. 96). First of all, many believe, in opposition to *Hemdat shelomo*, that there are *rishonim* who hold that *ex post facto*, *qabbalat ha-mitsvot* is not necessary. See also the responsum of R. Naphtali Zvi Judah Berlin mentioned at the beginning of this review. Secondly, R. Uziel never said that *qabbalat ha-mitsvot* is not necessary. Let us not forget, the *Shulhan arukh, Yoreh de`ah* 268:2-3, lists this as a requirement. Rather, he understands *qabbalat ha-mitsvot* to mean that the convert accepts that the commandments are binding and that he will be punished for transgressions. Yet it does not mean that he agrees to actually fulfill the *mitsvot*. Alternatively, R. Uziel suggests that *qabbalat ha-mitsvot* is demonstrated by immersion. This latter point is not unique to R. Uziel, as it was previously stated by Lipshitz, *Hemdat shelomo, Yoreh de`ah* nos. 29-30 (the following quotes are found on pp. 77b and 79a):

ולעולם קבלת המצות ודאי דמעכב, רק דזה נכלל בטבילת גירות דכיון שטבל עצמו להיות גר ולהכנס בדת ישראל, ממילא הוי קבלת המצות . . . דכיון דטבלה לשם גירות הוי ממילא קבלת המצות כיון דאין צריך הודעת המצות.

Avidan, "*Be-inyan gerut*," p. 82, connects Lipshitz's view with the lenient opinions on conversion of R. Solomon Kluger and R. Hayyim Ozer Grodzinski. See also Sagi and Zohar, pp. 208ff. Posner's viewpoint in this matter appears to be no different than Lipschitz's. See *She'eilot u-teshuvot beit me'ir* (Jerusalem, 1995), no. 12 (p. 72):

לשיטת התוספות והטור והש"ע עיקר קבלת המצוות הו' במה שמקבלה עליה בב"ד לטבול לשם גירות.

halakhists, including R. Moses Isserles.[45] In fact, in describing the conversion ceremony in *Hilkhot Issurei bi'ah* 14:6, Maimonides never uses the language of *qabbalah,* only *hoda`ah,* which shows that *hoda`at ha-mitsvot* also incorporates *qabbalat ha-mitsvot*.[46] According to R. Hayyim Amsalem, R. Solomon Lipshutz (1765-1839)[47] is actually the first to distinguish between *hoda`at ha-mitsvot* and *qabbalat ha-mitsvot*. Amsalem asserts that this is definitely not the understanding of those *rishonim* who refuse to invalidate a conversion for lack of *hoda`at ha-mitsvot*. For them, lack of *hoda`at ha-mitsvot* means that there is no *qabbalat ha-mitsvot*.[48] In other words, according to these *rishonim, ex post facto* there is no necessity for *qabbalat ha-mitsvot* at the time of conversion.

R. Joseph Karo, *Shulhan arukh, Yoreh de`ah* 268:3, speaks of the two concepts, *hoda`at ha-mitsvot* and *qabbalat ha-mitsvot*, as one (להודיעו המצוות לקבלם). He also states that if the acceptance of *mitsvot* does not take place the conversion is invalid, even *ex post facto*. There is another type of *hoda`at ha-mitsvot*, and that is spoken of in *Yoreh de`ah* 268:12. Here Karo writes that if you don't inform the convert of the reward and punishment for the *mitsvot* (שלא הודיעוהו שכר המצוות ועונשן),[49] the conversion is still valid. Yet this is very different from the simple *hoda`at ha-mitsvot* which informs the convert of the existence of the *mitsvot*, and without which, according to many, there can be no *qabbalat ha-mitsvot*.

It is commonly stated that Karo's formulation in *Yoreh de`ah* 268:12 repeats what Maimonides states in *Issurei bi'ah* 13:17. Yet this is not entirely correct, as Karo makes a subtle change. Maimonides writes that if you don't inform the potential convert of the commandments and the punishments for lack of observance (גר . . . שלא הודיעוהו המצוות ועונשן), the conversion is still valid. Maimonides is speaking of two separate things, 1: Informing the potential convert of the commandments, and 2: Informing him of the punishment for transgressing them. Karo

45. For R. Moses Isserles, see *Darkhei mosheh, Yoreh de`ah* 268:1, and the explanation of his position in Rosenthal, "*Be-hilkhot gerut*," p. 28, and Avidan, "*Be-inyan gerut*," p. 78. See also Finkelstein, *Conversion*, p. 182 n. 66. For some other examples of those who identify *hoda`at ha-mitsvot* and *qabbalat ha-mitsvot*, see R. Aaron Sasson, *Torat emet* (Venice, 1626), no. 20 (who independently of the *Bah* concludes that according to Maimonides a conversion is valid even without *qabbalat ha-mitsvot*):
ואף על פי שלא היה פה קבלת מצות כבר כתב הרמב"ם ז"ל בסוף פרק י"ג גר שלא בדקו אחריו או שלא הודיעוהו המצות ועונשן ומל וטבל בפני שלשה הדיוטות הרי זה גר . . . נראה מכאן שקבלת המצות אינה מעכבת.

R. Meir Posner, *She'eilot u-teshuvot beit me'ir*, no. 12:
קבלת מצות ע"י הודעה ודאי מעכב.

R. Elijah ben Hayyim, *She'eilot u-teshuvot r. eliyahu ben hayyim* (Jerusalem, 1960), vol. 2 no. 92 (the second no. 92):
משמע דמודיעין אותו היינו קבלת מצות.

R. Shlomo Drimer, *Beit shelomoh, Orah hayyim*, no. 113:
נראה שהרמב"ם לשיטתו שסובר שהודעת המצות אינו מעכב בדיעבד, וכן הם דברי הנמוקי יוסף, על כן אין צריך בדיעבד דוקא תלמידי חכמים וסגי בהדיוטות, אבל להתוס' והרא"ש דקבלת המצות עיקר, ומעכב בדיעבד, ופליגי אהרמב"ם כמו שכתב הדרכי משה וב"ח (סי' רסח) ומבואר מדבריהם דהודעת המצות וקבלת המצות אחת היא.

R. Yitzhak Ralbag, "*Qabbalat mitsvot be-gerut*," p. 67:
הרמ"א זיהה את הודעת המצוות וקבלת המצוות כדבר אחד, וכן הבין הב"ח בדברי הרמב"ם, והגיע למסקנא שאין הודעת המצוות וקבלת המצוות מעכבים בגירות.

R. Shalom Yifrah, *Minhat shalom: Ketubbot* (*Benei Beraq*, 2002), pp. 94, 95:
הכי איתא להדיא בריטב"א ז"ל שכתב וז"ל: ואע"ג דגר בעלמא בעינן שיודיעוהו קלות וחמורות ההוא למצוה ולא לעכב, והכא דלאו בר הודעה הוא אינו מעכב עכ"ל, הרי לן דשפתיו ברור מללו דענין קבלת המצות אינו אלא למצוה ולא לעכב . . . הרי לן דשיטת הר"ן והשיטה ישנה והריטב"א והנמו"י והרמב"ם ז"ל דא"צ בקבלת המצות בכדי שהגירות תחול.
See also R. David Zvi Hoffmann, *Melammed leho'il* (New York, 1954), vol. 2, no. 87:
ואיך יקבל המצות אם אינו יודע המצות.

46. See R. Hananyah Yosef Eisenbach, *Mahaneh yosef* (Jerusalem, 1981), p. 74. Maimonides uses the language of *qabbalah* in *Hilkhot Issurei bi'ah* 13:4, 14 and 14:5.

47. *Hemdat shelomoh, Yoreh de`ah*, nos. 29-30.

48. *Or torah* (*Tammuz* 5768), pp. 840-841. Abergel, *Dibrot eliyahu*, vol. 7, no. 59, writing to Amsalem, expresses complete agreement with his position.

reformulates the halakhah so that only one thing is being referred to, namely, the reward and punishment associated with the commandments. Why did he alter Maimonides' formulation? I think it is clear that he understood Maimonides' words שלא הודיעוהו המצות to mean that lack of acceptance of the commandments does not invalidate a conversion *ex post facto*. Since he disagreed with this (as stated in *Yoreh de`ah* 268:3), he changed Maimonides' language.[50]

Sagi and Zohar deserve credit for attempting to tackle an issue that is of vast practical significance in modern times.

All that has been said so far does not mean that any *rishonim* repudiated the *Demai* text, which states that a convert cannot reject any *mitsvot*. There is a difference between conversion without acceptance of *mitsvot*, which some *rishonim* validate *ex post facto*, and conversion while explicitly *rejecting* the binding nature of *mitsvot*. Sagi and Zohar have providedno evidence that any *rishonim* believed that the latter case, too, would be a valid conversion.

There are a few other points I would like to clarify.

1. Sagi and Zohar write: "Facing a rash of intermarriages in the 1920's, the rabbinical leadership of the Syrian Jewish community in Argentina resolved in 1927 to totally forbid *giyyur*" (p. 87). Sagi and Zohar then state that this enactment was adopted in 1935 by the rabbis of the Syrian Jewish community in Brooklyn, and later by other Syrian communities.

What is not often realized is that the Argentine decree did not entirely forbid conversion. Rather, it stated that there were to be no conversions carried out in Argentina. This was done to prevent Jews from getting romantically involved with non-Jews on the assumption that if they chose to get married the non-Jewish partner could get a quick conversion.[51] Yet the Argentine decree did not close the door entirely. It allowed that anyone who wanted to convert could go to Jerusalem where "perhaps they will accept them," as put by R. Saul Sithon, the one responsible for the decree.[52]

In Jerusalem the conversion would be carried out by the leading *beit din* (sometimes identified

49. Sagi and Zohar, p. 201, and also Broyde and Kadosh, p. 93, translate these words as follows: "[If they] did not inform him of the commandments and the punishment for transgressing them." This is incorrect. Karo does not refer to two separate things, namely, 1: Inform the potential convert of the commandments, 2: Inform him of the punishment for transgressing them. Karo is speaking of one thing, and one thing only, namely, informing the convert of the reward and punishment to be received for following or transgressing the commandments. Thus, Broyde and Kadosh, p. 93, are also mistaken when they claim that in this paragraph the *Shulhan arukh* waives notification of the commandments, but not acceptance, as this paragraph has nothing to do with either of these things. I must also express disapproval with the way Broyde and Kadosh discuss Sagi's and Zohar's analysis of the *Shulhan arukh* (p. 93). They make it seem that Sagi and Zohar have come up with a fraudulent "internal contradiction" in the *Shulhan arukh*, and then point out their supposed error. In truth, as Sagi and Zohar state, it is not only they who see a tension between the two *halakhot*, but also R. Meir Posner and R. Shlomo Lipschitz, both of whom attempt to explain the difficulty. Many other traditional scholars have also attempted to explain what they see as an apparent contradiction. Therefore, I don't see how it is possible to criticize Sagi and Zohar for discussing a point that was raised by so many earlier traditional scholars

50. After coming to this conclusion, I found that Rosenthal, "*Be-hilkhot geruṛ*", pp. 28-29, says the same thing. Alternatively, some have claimed that Karo's reformulation of Maimonides' words is what he understood Maimonides to be saying. But this interpretation is extremely unlikely as the reformulation ignores Maimonides' explicit words that a proselyte who was not informed about the commandments is still a valid convert.

51. See Moshe Zemer, "Tha Rabbinic Ban on Conversion in Argentina," *Judaism* 37 (Winter 1988), pp. 84-96.

52. *Dibber sha'ul* (Jerusalem, 1991), *Yoreh de`ah,* no. 3.

as the "*beit din ha-gadol*").[53] In an era before airplanes, anyone willing to undertake such a journey showed that he or she was serious about converting. After such a conversion in the Holy Land, the convert would indeed be accepted in the Argentine community.[54]

2. On p. 241, the authors refer to R. Abraham Dov Ber Kahana Shapiro of Kovno as "Ultra-Orthodox." I understand the desire to label him as such, because his view of conversion and *qabbalat ha-mitsvot* is very stringent. Yet the truth is that Shapiro was the closest thing to a Modern Orthodox leader in Lithuania. To be sure, he was not like the typical German rabbi, but he supported secular studies and gave his backing to schools that had a *Torah im derekh erets* curriculum. It is not for naught that many in the yeshiva world regarded this great *poseq* and rabbinic leader as a quasi-*maskil*.[55]

3. In order to show "a striking instance of identification of proselyte immersion with birth of a Jew," Sagi and Zohar, p. 275, cite "the highly regarded first edition" of the *Mishneh torah*, *Hilkhot milah* 1:7, which states that a non-Jew who converts while already circumcised should undergo covenantal blood-letting on the eighth day after his conversion. This is a nice theory, but unfortunately the evidence is lacking, as there is no question that the words "on the eighth day after his *giyyur*" are mistaken. They do not appear in any of the best manuscripts, and this includes the Yemenite manuscripts and the Huntington manuscript that has Maimonides' attestation.

4. Sagi and Zohar cite the view of R. Moses Hakohen that "acceptance of the commandments" does not signify intent to actually fulfill them. Rather, it means "that he accepts all the commandments of the Torah in the sense that, if he transgresses, he will be liable for such punishment as he deserves" (p. 230). As summarized by the authors, this means that proselytes are required to acknowledge that "the Torah's framework of reward and punishment will apply to them as it does to all Jews."

Sagi and Zohar see this as an opinion that is very valuable in our day, as a way of countering the increasing stringencies in matters of conversion. Yet I wonder where Hakohen's view leaves the typical non-observant convert. Hakohen is speaking about someone who doesn't observe *mitsvot* but recognizes that he will receive punishment for this lack of observance. Are there really any such converts? Isn't the typical non-observant convert one

53. See R. Abraham Isaac Kook, *Da`at kohen*, no. 154; Shabtai, *Divrei hizqiyahu, Yoreh de`ah*, no. 1; and the 1938 letters from the Sephardic beit din of Jerusalem and the Allepo Beit Din of Jerusalem in Sithon, *Dibber sha'ul,* introduction, pp. 17, 19.

54. Despite the current practice in the Syrian community, the original 1935 Brooklyn decree mentions nothing about conversions carried out *not* for the sake of marriage. The 1946 decree reads: "Our community will never accept any converts, male or female, for marriage." The implication seems to be that, as with the Argentine decree, a convert would be accepted if the conversion was done for spiritual reasons. See the text of the decrees in Sarina Roffé, "An Analysis of Brooklyn's Rabbinical *Takana* Prohibiting Syrian and Near Eastern Jews from Marrying Converts," (unpublished MA thesis, Touro College, 2006), appendix. See also ibid., pp. 27 n. 43, 37.

55. With regard to Shapiro, the authors write that he agreed that "if a court did accept an inappropriate candidate and he did undergo *giyyur*, he thereby became fully Jewish and his *giyyur* cannot be invalidated *ex post facto*" (p. 243). I have no idea where they get this assumption, which although true with regard to R. Isser Yehudah Unterman (whom they cite) and also other decisors, is never stated by Shapiro. Rather, Shapiro writes that he is not sure what the *halakhah* is with regard to one who converted while fully intending to violate commandments *le-te`avon* (that is, out of desire rather than out of principle). See *Devar avraham* (Jerusalem, 1969), vol. 3, no. 28.

who rejects this basic point? That is, the non-observant convert does *not* believe that he will receive divine punishment for violating the commandments. Since that is the case, it does not seem that Hakohen's position has any applicability to the current conversion controversy.

I have by no means exhausted all that can be said about Sagi's and Zohar's fascinating book. While it is true that some of their readings can be challenged, they deserve a great deal of credit for attempting to tackle an issue that is not merely of scholarly interest, but also of vast practical significance in modern times. We are faced with a situation where the Jewishness of thousands of converts is being challenged, and most people have no clue as to what the basic issues are. For those who wish to understand what all the fighting is about, *Transforming Identity* is a great place to start.

Meorot
A Forum of Modern Orthodox Discourse

REVIEW ESSAY

Windows on the World—Judaism Beyond Ethnicity: A Review of *Abraham's Journey* by Joseph B. Soloveitchik, edited by David Shatz, Joel B. Wolowelsky and Reuven Ziegler, and *Future Tense* by Rabbi Jonathan Sacks

Eugene Korn

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Meorot 8
Tishrei 5771
© 2010

A Publication of
Yeshivat Chovevei Torah
Rabbinical School

Windows on the World—Judaism Beyond Ethnicity: A Review of *Abraham's Journey* by Joseph B. Soloveitchik, edited by David Shatz, Joel B. Wolowelsky and Reuven Ziegler (Jersey City: KTAV, 2008), and *Future Tense* by Rabbi Jonathan Sacks (New York: Schocken, 2009)

Eugene Korn

Not long ago I found myself perusing the books in my shul's *beit midrash*, which doubles as a small sanctuary. I was struck that the *sefarim*—both Hebrew and English—consisted overwhelmingly of volumes dedicated exclusively to *halakhah,* among them *hilkhot tefillah, hilkhot tsini`ut*, *hilkhot birkhat hahamah,* as well as handbooks explaining the laws of *kashrut*, holidays and mourning. In all, there were fifty-one shelves of books related to Talmud and *halakhah*, nine shelves of Bible and biblical commentary, and a mere three shelves devoted to Jewish philosophy, thought or *mahshevet yisrael.*

The shelves mirror where Orthodoxy is today. The trend toward popular publications of halakhic treatises that started with R. Shimon Eider's manual on *hilkhot eruvin* in the 70's has been taken up with gusto by Art Scroll, Israeli rabbis and others. Yet while R. Eider's original manual was a mere eight pages, the recent popular tract on *hilkhot eruvin* by Rabbi Yosef Gavriel Bechhofer spans no less than 152 pages! Today's Orthodoxy is dominated by *heftsah/gavrah*—the *heftsah* of the *Shulhan arukh* and the *gavrah* of the *Ish Halakhah.*

Certainly much of this trend is for the good. One need only observe the tumultuous vicissitudes (and questionable futures) of non-halakhic interpretations of Judaism. *Halakhah* has always been the essential mode of Jewish religious expression and a necessary stabilizing force for our lives as a people.

The weapons of that war were Jewish books; and so it is today.

Yet it is not enough. Even the consummate halahkic man, Rabbi Joseph B. Soloveitchik, recognized early in life that an exclusive diet of *halakhah* leads to "a soulless being, dry and insensitive."[1] In the end, no amount of elaboration on the rules can nurture a spiritual personality or satisfy deep spiritual hunger; and no amount of technical logical analysis can soothe one troubled after a dark night of the soul.

There are also sociological and ideological implications. Like the *eruv, halakhah* is meant to fashion a closed communal space that is carefully circumscribed by formidable barriers. In addition to acculturating Jews to the culture of the *beit midrash*, it creates a private, often esoteric, language that undermines shared communication with those outside the halakhic community. This was the real issue at stake in the fierce controversy that raged in the Jewish

1. Joseph B. Soloveitchik, "A Tribute to the Rebbitzen of Talne," *Tradition* 17:2, Spring 1978 (Rabbinical Council of America, 1978) p. 77. He follows in the tradition of Maimonides on this. See MT, *Hilkhot yedosei ha-torah* 4:13.

communities of Provence during the thirteenth century. Should the *beit midrash* encompass Maimonides' broad educational curriculum or be exclusively confined to Talmud? Should medieval Ashkenazi Jewry relate to the wider world or close itself off from that world? The weapons of that war were Jewish books; and so it is today.

Orthodoxy's current pan-halakhism seems to have lost interest in the human condition *per se*, and is rapidly losing the language to discuss universal human concerns like ethics, justice, spirituality and human purpose. It is a joy to note, therefore, two recently published books that reveal the theological reflections of Rav Soloveitchik and Jonathan Sacks, Chief Rabbi of the United Kingdom.

Can Abraham be a paradigm for Orthodox Jews defined by the Sinaitic commandments?

Abraham's Journey, Reflections on the Life of the Founding Patriarchs is the ninth volume of the *MeOtzar HoRav, Selected Writings of Rabbi Joseph B. Soloveitchik* series, and it is based on the numerous lectures about Abraham that Rav Soloveitchik delivered in the 1960's and 1970's. The editors deserve credit for synthesizing the disparate material and achieving a near seamless product. They also succeeded in faithfully preserving much of the Rav's eloquence, nobility of thought, broad eclectic vision and lyrical style. The book contains a number of themes that the Rav expressed in his other works, such as the dialectical and antinomous nature of religious experience, human longing for transcendence, spiritual advance and retreat, and unstinting faithfulness to Jewish tradition. But it also offers new glimpses of his personal spiritual life, such as reflections on his feelings about his famous father and grandfather, as well as his university experience in Berlin. The result is a penetrating and compelling religious *Weltanschaaung*. In many ways it is an expression of his personal sacred mission built around the biblical figure of Abraham, one that pulsates with romantic aspiration and philosophic insight.

For R. Soloveitchik, Abraham is the paradigmatic Jew, the religious model of what Jews today *ought to* become. (The first chapter is entitled, "Abraham as Personality and Paradigm.") It is more important for us to see Abraham as our spiritual patriarch worthy of emulation than as the genetic father of our people. This actually presents a challenge for Rav Soloveitchik and the Brisker tradition, which so often spoke as if Judaism were synonymous with formal *halakhah*. Abraham lived generations before revelation at Sinai and there is no indication in the Torah text that he observed *Torat Moshe* and its 613 *mitsvot*. If so, in what sense can he be considered a paradigm for Orthodox Jews who stand obligated—and for many, whose Jewish identity is *defined*—by the covenantal obligations accepted at Sinai?

So strong is this conceptual linking of Jewishness with Sinaitic commandments that the *tanna* R. Nahorai and the great *amora* Rav claimed that the Patriarchs observed all Sinaitic and later rabbinic *mitsvot*.[2] Yet in the tradition of Nahmanides, Ibn Ezra, Radaq, Seforno, Hizquni and Maimonides[3], R. Soloveitchik explicitly rejected this thesis[4] and postulated two distinct sacred Jewish covenants: the Patriarchic Covenant and the later Mosaic Sinai Covenant. The Talmud's ahistorical reconstruction of Abraham entails imputing to him prophetic powers of knowing Sinaitic revelation and future Jewish historical experience, something that the Bible never does. Paying careful attention to biblical grammar, semantics and philology, Rav Soloveitchik committed himself to a close reading of the biblical text and resisted reading into *Bereishit* ideas that are not there. It was also his soberness and fidelity to the text that led him to limn Abraham differently than does Maimonides, who portrayed him as a Jewish Socrates, the arch-

2. *M. Qiddushin*; end; BT *Yoma* 28b
3. See their respective commentaries on Gen. 26:5. For Maimonides, see *Mishneh torah, Hilkhot melakhim*, 9:1.
4. "Abraham did not have the system of *mitzvot bein adam la-Makom*," p. 58.

typical philosopher concerned exclusively with knowing metaphysical truth and dispelling philosophical error.[5]

If Abraham is the pre-halakhic man who lacked the 613 Sinaitic *mitsvot*, his religious greatness emerges from his possession of "an ethical system that had to be carried out and implemented" (p. 58): "He rebelled against paganism…for the sake of substituting an ethical life for an immoral one." (p. 46) Abraham's moral system is a universal one whose value is recognizable to all humanity. Abraham's revolutionary ethics gave him a spiritual charisma that empowered Sarah and him to convert the pagan "souls" around them. The ethic consisted of the seven Noahide commandments and the personal virtues of *hesed* and *tsedaqah*. Indeed, as R. Soloveitchik understands Abraham—and here is where the Rav disagrees with Maimonides—it is Abraham's kindness and ethical integrity that led others to recognize the Creator of Heaven and Earth, not his faith or his philosophic acumen. Abraham, and by implication all Jews after him, are charged "with keeping the way of the Lord *to do tsedaqah and mishpat*" (Gen. 18:19), a verse that R. Soloveitchik cited numerous times throughout the book and that he interpreted to mean committing oneself to a life of "hospitality, sympathy, compassion and a readiness to fight for justice and defend it."

Jewish tradition understood Abraham to be the symbol of *hesed*—outward directed action and overflowing kindness to others[6]—and this is clearly Abraham's primary *persona* for Rav Soloveitchik also. Of course the heroic patriarch's personality was a multi-faceted combination of commitment to God's authority, religious knowledge and ethics. R. Soloveitchik never tried to reduce faith to ethics as so many modern liberal Jewish and Christian theologians did. Yet the virtues of *hesed, tsedaqah,* and *mishpat* constitute Abraham's *kerygma*. His character of ethical excellence appears in every single chapter of the work. In the end, the test of true *emunah* and knowledge of God is the life of moral commitment.

Only people in exile could understand and appreciate a morality of kindness.

R. Soloveitchik interpreted most of *Sefer Bereishit*'s narrative about Abraham through this ethical lens: In pleading to God to spare Sodom, Abraham announced "the morality of suffering." It was "a great moral gesture related to kindness, to the involvement of the I to the distress of the thou." His prayer for the people of Sodom indicated his faith in God and in the repentance of every human being. Following Rashi's interpretation that the argument between Abraham and Lot was over theft, R. Soloveitchik understood that Abraham separated from his nephew because Lot "no longer cared about the first and most important prohibition in Abraham's code, the one against stealing." Here the Rav made a point of insisting that the *halakhah* prohibits theft from gentiles: "Whether the gentile is my friend or my enemy, stealing is prohibited." (p. 124)

Abraham's descent to Egypt illustrated Abraham's moral and human integrity. The community of Abraham considered Sarai a full individual, "a person in her own right, a spiritual figure with a name and on par with Abraham

5. *Mishneh torah*, *Hilkhot avodat kokhavim*, 1:3-4.

6. Maimonides defines hesed as "overflow" ("*haflagah*" in the Hebrew translation of the original Arabic) in *Guide of the Perplexed* III:53, having both ethical and metaphysical connotations. Rav Soloveitchik clearly uses *hesed* in both these senses when he portrays Abraham as a paradigm of *hesed*. Also significant is the association in rabbinic and qabbalistic literature of *hesed* with "*lifnim mi-shurat ha-din*" and often contrasted with "*gevurah*" restraint and strict *din*. This fits well with R. Soloveitchik's understanding of Abraham as a pre-halakhic Jew.

himself"; but the Egyptian community saw her only as "the woman who was very beautiful" i.e., an aesthetic object to be enjoyed and exploited. (pp. 114-115) On a grander scale, our later Jewish bondage in Egypt served a moral *telos*: Slavery was necessary so the covenantal people would know the *experience* of suffering. "Only people in exile could understand and appreciate a morality of kindness." (p. 197)

The biblical narratives about Abraham set before us the first *shulhan arukh*, "a table of moral virtues" in R. Soloveitchik's language. Well before the post-moderns philosophers Emmanuel Levinas and Jacques Derrida wrote about hospitality as a central ethical act, R. Soloveitchik argued that hospitality lay at the head of Abraham's religious table. The Torah emphasizes *hesed* as Abraham's characteristic trait because *hakhnasat orehim* has greater moral value than does *tsedaqah*. It requires personal time and involvement with the other; checkbook Judaism does not suffice for the covenantal man. Significantly, R. Soloveitchik saw Abraham as the paradigm of *hesed* and morality not solely for his Jewish descendants, but for all humanity: central to R. Soloveitchik's conception of the *berit* is that Abraham's community is "the universal community."

"Our task is to teach the Torah to mankind, to influence the non-Jewish world, redeem it from cruelty and insensitivity, arouse in mankind a sense of justice and fairness"

The primacy of ethics in the patriarchal covenant led R. Soloveitchik to disagree fundamentally with Soren Kierkegaard and other Christian theologians in their interpretations of *Akeidat Yitshak*. R. Soloveitchik was deeply influenced by Kierkegaard's famous understanding of that episode found in his *Fear and Trembling*. The Rav was moved by Kierkegaard's portrayal of Abraham's absolute romantic and non-cognitive surrender to God. Existential surrender to God was a major *motif* of the religious life for R. Soloveitchik**,** and in other works he used Kierkegaard's phraseology of being "insanely committed to" and "madly in love with" God.[7] Yet he could not accept Kierkegaard's conclusion that God asked Abraham to prove his faith by rejecting morality. Given his understanding of God's covenant with Abraham as being a moral exemplar and his reading of "to keep the way of the Lord, that is to do righteousness and justice," it was impossible for R. Soloveitchik to accept Kierkegaard's assertion that God requires faith to trump the moral law.

On a practical level R. Soloveitchik understood morality to be the primary expression of faith in the God of Israel, both for the biblical Abraham and for today's halakhic Jew. Hence he explicitly denied in the name of *halakhah* that faith requires us to deny any true moral norm of action.[8] In this volume R. Soloveitchik repeatedly refers to "Abraham's sacrifice" in dramatic fashion, learning lessons from it and enshrining it as a model for Jewish piety and spiritual "service awareness." The *aqeidah* teaches that "Man belongs completely to God—body and soul. God owns human existence at every level, physical, spiritual and social." As he did in Abraham's case, "God demands that man bring the supreme sacrifice." (pp. 10-11) Yet here R. Soloveitchik expressed the classic rabbinic worldview in dramatic fashion, and followed the predominant Jewish interpretation expressed in the *midrashim* that God tested Abraham by forcing him to choose between his love for God and his love for his son.[8] R. Soloveitchik and Jewish tradition understood that Abraham experienced the *aqeidah* as a dilemma between piety and possession, not *mitsvah* and morality.

R. Soloveitchik's Abraham intended to convert the whole world to monotheism and the morality of *hesed*. And understanding Abraham as the paradigm for his descendants, R. Soloveitchik insisted that "our task is to teach the Torah to mankind, to influence the non-

7. "The Lonely Man of Faith," *Tradition,* Vol. 7, No. 2, (Summer 1965) pp. 60-61
8. Ibid., pp. 61-62

Jewish world, to redeem it from an orgiastic way of living, from cruelty and insensitivity and to arouse in mankind a sense of justice and fairness. In a word, we are to teach the world the seven *mitzvot* that are binding on every human being." This was Abraham's spiritual calling and the role Jews are to play throughout human history. Our covenant with God is more than ethnic survival and celebration, obedience to the Divine, or inner spirituality. For R. Soloveitchik, Torah is a universal—even a cosmic—mission achieved through a life of active *qedushah* and ethical modeling. This is the opposite of Jewish ethno-centrism. He believed that he Jewish people were created for mankind, not mankind for the Jews.[9]

Many of the themes that R. Soloveitchik articulated in *Abraham's Journey* are taken up by R. Jonathan Sacks, who has clearly established himself as today's most eloquent spokesperson of Centrist Orthodoxy. *Future Tense* is audacious in its scope, deftly taking on nearly every one of the burning issues the Jewish people today: anti-Semitism, Zionism, Jewish continuity and survival, Biblical theology, messianism, Jewish particularism and the meaning of Jewish tradition. Above all, Sacks struggles with the central questions of, "What role does God want His chosen people to play in sacred history?" and "What *is* Israel's story?" The book's title is an intentional *double entendre*, connoting a program for the Jewish future as well as the deep anxiety Jews have regarding what lies ahead for our people.

Sacks confesses a problem: Most Jews—and particularly the Orthodox Jews he lives with and loves—have lost their way and forgotten our people's story and Judaism's vision. Historically, Jews lived through repeated catastrophes, yet they never defined themselves as victims and never saw anti-Semitism as written into the fabric of the universe. But paradoxically, many do so today despite our freedom and ready access to gentile cultures. The Jewish people has turned inward, sustained by neither hope nor purpose, but by the common cause of defending ourselves against perceived anti-Semitism. The Other is hostile and ubiquitous, be he the Christian, the secular liberal or the Middle East Muslim.[10] Jewish politics has become the politics of fear. Contrary to our rabbinic tradition[11], the pagan Balaam's observation that Jews are "a people that dwells alone" (Num. 23:9) has become an ideal: We are a people that *ought to* dwell alone.

What role does God want His chosen people to play in sacred history? What is Israel's story?

After Auschwitz and Israel's wars, we are indeed a nervous people feeling that Jewish destiny is determined by fate, not faith. To use R. Soloveitchik's dichotomy, *berit goral* (the covenant of fate) has overwhelmed *berit yi'ud,* our covenantal destiny of sacred purpose. Fate has seduced us into seeing ourselves as objects, robbing us of moral agency and our covenantal calling. This is spiritually deflating as well as existentially self-defeating, for in the open and autonomy oriented cultures in which most Jews live today, a Jewish identity built on fear and the specter of persecution will convince few Jews to cast their lot with Jewish destiny. Committed Orthodox Jews may do so, but if it is only Orthodox Jews who remain Jewish, we will cease to be a people and become a sect—much to the dismay of God, who demands in His Torah that we be "a kingdom of priests and a holy *people*." Sacks is convinced that King Solomon was correct: "Without a vision, a people perish." (Proverbs 29:18)

Sacks is no Pollyanna underestimating the reality of today's or tomorrow's anti-Semitism. He publically fights anti-Semites and anti-Zionists

9. This principle was also articulated by R. Naftali Tsvi Yehuda Berlin (Netsiv). See *Ha-ameq davar*, introduction to Exodus.
10. Sometimes the threatening Other is not a person but a movement or new ideology. During the trauma of the September 11, 2001 terrorist attacks in America, one Yeshiva College professor asked his students to write essays on what they fear the most personally. A number of students identified "feminism." as the most threatening force on their lives.
11. Sacks cites BT *Ta'anit* 20a: "Better the curses with which Abijah the Shilonit cursed Israel than the blessings with which Balaam blessed them." (p. 115)

in England, now the European center of the disease. Unlike John Paul Sartre, however, he just refuses to allow anti-Semites to define who we are or control Jewish destiny. In fact, the reality and power of anti-Semitism is essential to his understanding of God's covenantal plan for sacred history, the Jewish people and Judaism.

In the tradition of the physician and Zionist ideologue Leon Pinsker, Sacks diagnoses anti-Semitism as a pathology, a virus that has mutated into different forms throughout history. Its course runs from ancient xenophobia, to early Christian theological anti-Judaism, to full-fledged medieval Christian demonization of Jews, to Enlightenment rationality's denial of Jewish peoplehood to the current mutation, anti-Zionism. Yet for Sacks, this pathology is derivative of the Jewish people's positive religious mission, not something immutably built into the nature of the universe or gentile culture. "Anti-Semitism is the paradigm case of dislike of the unlike, the fear of the stranger, the outsider, the one not like us. It is the hatred of difference."[12] (p. 111) Anti-Semitism is an assault on all humanity and the human condition. It centers intensively on Jews because we are the paradigmatic Other in history. We have been the bone in the throat of all universalist schemes and movements. Jew hatred is prevalent because as outsiders, Jews always fight the complacency of the established order, covenantally questing for improvement. Yet anti-Semitism only begins with Jews, it never ends with them.

The only adequate response to the hatred of difference is to honor the dignity of difference

Sacks believes that the only adequate response to the fear and hatred of difference is to honor the dignity of difference. That is one of the Jewish messages to the world, an essential part of our covenantal teaching for humanity. The message is engraved in both the Torah ("Do not oppress the stranger," "Remember the exodus from the slavery of Egypt," the Bible's proclamation that all people are created in God's image and *Hazal*'s insistence that all creatures are owed *kevod ha-beriyot*—human dignity) and in the flesh of all Jews who suffered persecutions throughout the ages.

Rabbi Sacks also draws on Abraham as a Jewish paradigm. Our forefather struggled with the dialectic of his particularism—his difference—and his universal religious outlook and moral values. He was committed to teaching a social and moral code to all, a code built around the values of righteousness, justice, *hesed,* compassion and outreach to hospitable relations with others. Abraham was an individual; he had to live in a particular place and fashion a particular society. His covenantal calling that became the Judaism we know today is a code for a self-governing ethically ordered society. It is animated by a vision of moral redemption rather than theological salvation. (p. 135). As an experienced interfaith worker and public figure, Sacks has learned that if Jews have the courage to engage others, they will discover friends and allies in Christian, secular and even Muslim communities around the world. Real faith begets confidence, and confidence begets more courage.

Judaism is thus about society, not the state. It is a set of universal moral values lived in a particular place by a particular people meant to be a model for universal redemption and morality. This is the import of God's repeated charge in Genesis to all the Patriarchs, "Through you all the nations of the earth shall be blessed." Hence the Bible's sacred paradox: Israel must be particular, be different if it is to fulfill its religious mission to teach and bless universally.

12. This is also how the Bible understands the hatred of the prototypical anti-Semite, Haman: "There is a certain people dispersed and scattered among the peoples in all the provinces of your kingdom whose customs are different from all other people." (Esth. 3:8)

This challenge sheds light on the current dilemma of Judaism in the State of Israel. When Judaism is a function of state politics and party policies, it becomes divisive, coercive and unpopular. Judaism's religious role is to help Israel survive as a model for the humanization and moral progress of Jewish society, the Middle East and the world. A secure Israel that is just another amoral philistine country in the Middle East would betray the deeper Jewish religious significance. And for Jews everywhere, a philosophy of isolation from, apathy toward, and demonization of gentiles violates in a fundamental way the purpose of the Jewish covenant.

Sacks is most creative in his treatment of the concepts of Torah and human wisdom (*ḥokhmah*) and their relationship (chapter 10), but these also flow from his understanding of the Jewish people's proper relationship to the world. He asserts a proposition that is both devilishly simple and vast in its logical reach: "To change the world, we must understand the world." Understanding the world is the province of universal human *ḥokhmah*—the disciplines of science, philosophy, art, literature and history. He sees Torah identified with the moral ideals gained from revelation at Sinai and later Jewish tradition. This is the meaning of the rabbinic maxim, "Believe in the wisdom (*ḥokhmah*) of gentiles; do not believe in the Torah of gentiles." (*Eikhah rabbah* 2:13)

Sacks' dichotomy is actually the old philosophical distinction between 'is' and 'ought,' between facts and norms. David Hume observed in the eighteenth century that these are two different domains, and one may not validly derive what ought to be from what is. Philosophers ever since have been flummoxed by trying to connect 'is' to 'ought.' Sacks achieves this spiritually, if not logically. The covenantal task of Judaism is to teach and apply moral ideals (Torah) to human culture and the nations. Yet for Jews to succeed in redeeming the world with Jewish values, they must understand the world through *ḥokhmah*. Without human knowledge, Torah becomes trivial, obscurantist and esoteric—in other words, a flight from life and the drama of human history. Unlike Maimonides, who saw metaphysical knowledge as a spiritual end in itself, Sacks values knowledge for its instrumental effectiveness in achieving moral and human progress. Valuing human knowledge is basic talmudic tradition, for according to Rabbis Shim bar Pazzi, Yehoshua ben Levi and Bar Kappara, ignorance of *ḥokhmah* is blasphemy.[13] Willy-nilly, then, the Jewish religious calling includes knowing God's universe—'*is*' and '*ought*' alike.

"To change the world, we must the understand world."

R. Sacks interprets the biblical narrative as a counter-lesson to Western culture. Plato and the Greeks were hypnotized by universals, and this is why most great Western literature proceeds from the particular to the universal. But the Torah starts from the universal (Genesis chapters 1-11) and proceeds to the particular story of Abraham and his descendants. The unique Jewish message is that the human condition and morality must always be primarily located in the individual, never the universal.

We are most human, feel most profoundly, love most deeply and attach ourselves most securely to particulars—our family, our homes, our countries. The Greek focus on universals cannot produce a morality to which people are passionately committed. (This insight reminds me of the frequently cited statement attributed to the cosmopolitan Jewish intellectual, Rosa Luxemburg: "Do not bother me about Jewish suffering. I am busy saving humanity.") The universal gains significance only when it takes seriously the individual and his particular experience. This also extends to God, who has

13. BT *Shabbat* 75a.

two names: "*Elokim*" the universal God of Nature, which is actually a description not a name, and "*Adonai*" (the Tetragrammaton), a personal name used by Israel in its particular relationship with the Divine.

In the end, Sack's Judaism is future oriented, "the voice of hope in the conversation of humankind." It is about the uncompromising belief in the possibility of human redemption and the eternal Jewish task to use Torah and God's *mitsvot* to bring the world to the messianic age. Sacks echoes the essayist Matthew Arnold[14] and the political philosopher Leo Strauss[15] in claiming that Judaism differed from Greek philosophy by believing that human moral and social progress were possible. The Greeks did not share that belief, and thus produced only the stoic acceptance of injustice and evil; Jewish belief led to ethical activism. Judaism differs from Christianity in maintaining that the messianic coming is a future event,

For piety to be objectively significant it must connect to the world outside.

not one that has already occurred.[16] This is the correct biblical understanding of God, who defines Himself in futuristic terms: "*Ehiyeh asher ehiyeh*"—"I will be what I will Be." Only a Greek mind complacent about the imperfect present could mistranslate the Hebrew into, "I am that I am."

More than a mere hope for a better future, Judaism is also a set of values and program for realizing that hope, and faith in this substantive vision is desperately needed to reinvigorate Jewish continuity and commitment. But Judaism extends beyond our people. Torah values are necessary for the world to believe that it can defeat extremism, tragedy and violence—beliefs that are essential if our century is to retain its commitment to humanity's future. While not always precise in his details, Jonathan Sacks is certainly accurate and breathtaking in his global vision of Judaism and Jewish destiny.

There is an often overlooked *halakhah* that the room in which one prays must contain a window. This requirement is not the result of imitating the stained-glass window décor of grand cathedrals, but reflects the healthy spiritual outlook of *Hazal*. For prayer and piety to be something significant they must connect to the world outside. They must transcend technicalities and provide a view to culture and its enduring human issues If that is true about the single *mitsvah* of *tefillah*, it is all the more so about the entire enterprise of *shemirat ha-mitsvot* and our covenantal commitment to a life of Torah.

Throughout these two books, Rav Soloveitchik and Rabbi Jonathan Sacks teach us that while Torah and the holy Jewish covenant may be nurtured in the *beit midrash*, they must be windows to the world beyond that is both God's and ours. Even more, these two rabbis challenge us to engage that world, reminding us that that the Bible's prophecy of isolation for the Jewish people was indeed a curse uttered by our enemy, while the challenge to "be a blessing to all the nations of the earth" was given to us by The Holy One, Himself.

14. "Hebraism and Hellenism," in *Culture and Anarchy: An Essay in Political and Social Criticism* [1869)] (Yale University Press, 1994) ch. 4.
15. "Jerusalem and Athens" reprinted in *Jewish Philosophy and the Crisis of Modernity* (SUNY: Albany 1997) pp. 377-405.
16. This explains a paradox observed by Gershom Scholem. While traditional rabbis always insisted in the belief of the coming of the messiah, actual appearances of people claiming to be the messiah and ushering in the messianic era in the here and now invariably elicited rabbinic opposition and censure. See "Toward an Understanding of the Messianic Idea in Judaism" in *The Messianic Idea in Judaism and Other Essays* (New York: Schocken, 1971)