

Rabbi Yehuda Herzl Henkin, author of the responsa collection *Benei Banim* (4 volumes to date), is a leading contemporary modern-Orthodox and religious-Zionist *posek* (rabbinic decisor) living in Jerusalem.

**POSTPONEMENT OF  
THE *MITZVAH* OF PROCREATION:  
A RESPONSE TO RABBI DR. BINYAMIN LAU<sup>1</sup>  
Rabbi Yehuda Herzl Henkin**

In his article, Rabbi Binyamin Lau seeks to prove from a responsum of the Maharit (Rabbi Yosef Mi-Trani, 1568-1639) that delaying the fulfillment of a *mitzvah* is not akin to its abrogation and that one may, therefore, delay procreation following marriage. Begging his pardon, Rabbi Lau not only quoted this responsum inaccurately, he did so only partially. In that responsum, the Maharit discusses a man who swore not to marry a woman—in addition to a minor to whom he was already betrothed—until his current betrothed minor reached adulthood. (As a child, she was too young to bear him children.) The following are the relevant parts of the responsum:

Surely [this is such]! For certainly there is an abrogation of the *mitzvah* [of procreation] once a man passes the age of twenty years, as they [the Sages] said in the first chapter of [Tractate] *Kidushin*: “Up until twenty years, the Holy One, blessed be He, sits and waits expectantly...” And the Rambam *z”l* wrote, in Chapter 15 of *Hilkhos Ishut*: “Once twenty years have elapsed and a man has not taken a wife, he thereby transgresses and abrogates a positive commandment.”

Yet there is room for doubt, for perhaps they [the Sages] did not say that “An oath made to nullify a *mitzvah* is invalid” except where the *mitzvah* in question would be abrogated entirely, such as that which we learned in *Elu Mutarin* [concerning]: “A *sukah* I [vow that I] will not build, a *lulav* I [vow that I] will not take...”—regarding oaths (if sworn as an oath—a *shevu’ah*), it is permitted [to still build a *sukah* and to take a *lulav*] because “one cannot be bound by an oath taken to transgress

---

<sup>1</sup>As printed in *Granot* 3 (2003), 149-152, and subsequently in Responsa *Benei Banim* 4:#15. Our thanks to Rabbi Henkin for permission to translate and print his essay.

the *mitzvot*.” But this one, since he will eventually marry and fulfill the commandment of procreation, it is not considered abrogation....

The commandment of procreation remains constant throughout his life-time, yet from the moment he fulfills it [he is] absolved of its obligation, therefore when he delays it, it [constitutes] postponement of the *mitzvah*, but not [its] abrogation; for if he did it in the end, he fulfilled the *mitzvah*. Nevertheless, since he is commanded [in the obligation to procreate] now, he abrogates the [current] fulfillment of the *mitzvah*, as is proven from the language of the Rambam *z”l* who wrote: “Behold this one transgresses and abrogates a positive commandment.”<sup>1</sup>

In other words, certainly one who delays the performance of the *mitzvah* transgresses, and, for that reason, the Maharit cited the words of the Rambam. Nonetheless, perhaps one who makes an oath to *delay the mitzvah* is unlike one who takes an oath to *cancel a mitzvah completely*—in which case, his oath is null and void—because, unlike other *mitzvot*, the commandment to be fruitful and multiply is a continuing obligation and, if he does not fulfill it at a certain time, he can fulfill it later on. Therefore, the oath does not entirely cancel the *mitzvah* and, for this reason, the oath takes effect. The entire responsum deals with arguments on both sides of this question—perhaps the oath is binding, perhaps not—and concludes: “The bottom line is that we do not possess the power to uproot this oath (i.e. not to take a second wife) so that it won’t be binding upon him, for the reasons we have stated.” That is to say, to refrain from action is preferable and he may not marry another wife in addition to his betrothed, lest he violate his oath. But, absent the oath that coerces him, he is forbidden either to do away with the *mitzvah* of procreation completely or even to postpone it.

As R. Elyakim Ellinson *z”l* wrote in an article in *Noam*, citing the aforementioned responsum of the Maharit:

The commandment to procreate is not subject to postponement.... While we have seen that the Sages allowed a man to postpone his marriage up to a certain age and until he finds a fitting partner, one cannot derive permission from this to delay the fulfillment of the *mitzvah* once he is already married, and he is required to fulfill his obligation without additional delay.

It is, therefore, astonishing that in that same year, he published a pamphlet entitled “Family Planning and Contraception” in which he wrote the opposite, permitting contraception after marriage. Moreover, in his above-mentioned

<sup>1</sup> *Responsa Maharit, Yoreh De’ah 2:47*

article he made no mention of his pamphlet; and in his pamphlet, he made no mention of his earlier article. I wrote to him at the time to ask about the contradiction. He replied in brief that he had retracted what he had written earlier in the article in *Noam*, but he did not elaborate upon his reasons. At any rate, we are not dependent on him; and even if *he* reversed himself, did the Rambam and the Maharit reverse themselves?

Another point of astonishment is that Rabbi Ellinson wrote in his article in *Noam* that according to the Maharit, if when already betrothed to a minor one takes an oath not to marry another woman, the oath is invalid because it nullifies a *mitzvah*—contrary to what I demonstrated above in Responsa Maharit. Perhaps Rabbi Ellinson based himself on what was written in the *Otzar ha-Poskim* 1:17.<sup>2</sup> But I am even more astonished at the *Otzar ha-Poskim* for reading in the Responsa *Maharit* the opposite of what, in fact, the responsum concluded!

However, Rabbi Tzvi Hirsch ben Yaakov Ashkenazi (known as *Hakham Tzvi*) did understand the Responsa Maharit as I did.<sup>3</sup> It is true that in his responsum, Rabbi Hirsch, himself, disputes the Maharit on this point. But why, then, is his view cited in the *Otzar ha-Poskim* as saying “and thus, too, wrote the *Hakham Tzvi*,” as if they agree? At any rate, according to this, all the more so we may not distinguish between delaying fulfillment of the *mitzvah* itself and abrogating it. So, too, *Otzar ha-Poskim* cites a string of *aharonim* who wrote that one who postpones the *mitzvah* of procreation is considered to have abrogated it.

Now, it is said in a *beraita*: “Until he is twenty years, the Holy One, blessed is He, sits and waits expectantly for a man to take a wife. When he reaches twenty and has not yet married, [G-d] says: ‘Let his bones swell!’” (*Kidushin* 29b).

Rambam wrote: “From when is the man obligated in this *mitzvah*? [From the age of sixteen years or] from the age of seventeen. And when twenty years have passed, and he has not taken a wife, this one transgresses and abrogates a positive commandment.”<sup>4</sup> For Rambam, the phrase of “let his bones swell” is because he did not fulfill the *mitzvah* of procreation. Rabbi Menahem Meiri, on the other hand, explained that one who passes the age of twenty without marrying will never escape licentious thoughts, since he has persisted in them for so long.<sup>5</sup> According to Rambam, then, even if he took a wife prior to age twenty, if he did not then father offspring, he is subsumed under “let his bones swell.” While according to Meiri, since he did marry prior to age twenty, in

<sup>2</sup> *Otzar Ha-Poskim: Systematised Reasoned Digest of All Extant Rabbinic Responsa Bearing Upon Jewish Law and Ritual, Arranged in the Order of the Shulhan Arukh*, ed. Rabbi Isaac Ha-Levi Herzog, vol. 1, *Hilkhot Periyah Ve-reviyah (Simanim 1-6)* (Jerusalem: Otzar Ha-Poskim, 1947), 8.

<sup>3</sup> Responsa *Hakham Tzvi* #41 (p. 52).

<sup>4</sup> *Mishneh Torah, Hilkhot Ishut* 15:2.

<sup>5</sup> *Beit ha-Behirah, Kidushin* 29b, s.v. *ve-le'olam yisa*.

the end he will not be subject to sinful thoughts.<sup>6</sup> Rabbi Lau's view is thus opposed to that of Rambam (and even Meiri may disagree with Rambam only as to the applicability of "let his bones swell," while still prohibiting a delay in procreation).

It is, however, true that, in our day, postponing marriage creates great stumbling-blocks, as Rabbi Lau described at length and with good form and reason. It is a *mitzvah* for us to force ourselves, in order to speed up and advance marriage as much as possible. I would almost say, "It is time to act for God, violate Your Torah" in order that couples marry young, even if they wrongly put off procreation for a while. It is preferable (to use the Talmudic idiom) "that they eat the meat of dangerously ill animals that have been properly slaughtered and not eat the meat of animals that have died of illness without having been properly slaughtered" (i.e. the lesser of two evils).

Because of this, I generally permit a couple to use contraceptives for up to six months after the wedding. (Since the man is allowed to choose to be a sailor whose marital obligations to his wife are only once in six months,<sup>7</sup> in such a case, he would, anyways, not be fulfilling the *mitzvah* of procreation during that period of time; even though there is, obviously, room to distinguish between the two cases.) This length of time is sufficient in order to address most of the uncertainties and fears lest the marriage not turn out well, especially on the part of the bride.

The reason for the age of twenty mentioned in the *beraita* in *Kidushin* is not explained, but apparently it follows what Rabbi Yonatan said Isaac would say to God, "...deduct the twenty years that one is not punished for them" (*Shabbat* 89b). We likewise find in a *midrash* that the heavenly court does not punish for sins except from age twenty and up.<sup>8</sup> Prior to that age, they are not penalized for delaying the *mitzvah* of procreation.<sup>9</sup> But even a bachelor who passes the age of twenty and "let his bones swell," nevertheless, when eventually he marries, "his sins are shaken off," as Rabbi Hama ben Hanina said (*Yevamot* 63b), and it is as though he begins anew.

The *Yerushalmi* states that greatness atones for a scholar, a bridegroom, and a *nasi*, learning this about a bridegroom from "Esau went to Yishmael, and he took for a wife Mahlat the daughter of Yishmael" (Gen. 28:9). It queries "But was Mahlat her name? Wasn't her name Basmat? Rather, all his sins were forgiven [*nimhalu*]" (*Yerushalmi Bikurim* 3:3).

Since they learned this from Esau, it might seem that a bridegroom's sins are forgiven even without renunciation and repentance, but I think there is no rationale for saying this. Rather, in my opinion, "all his sins" is imprecise:

<sup>6</sup> *Ibid.*, s.v. *le'olam yilmod*.

<sup>7</sup> See *Shulhan Arukh, Even Ha-Ezer* 76:1, 6, and commentary of *Beit Shmuel* ad loc.

<sup>8</sup> See also Responsa *Benei Banim* 2:219, and the note there.

<sup>9</sup> See Rabbi Yosef Hazzan's Responsa *Hikrei Lev* (*Even ha-Ezer* #1, end) and Rabbi Yekhiel Mikhel Epstein's *Arukh Ha-Shulhan*.

only those sins that marriage naturally corrects are absolved, such as abrogating procreation, thinking sinful [sexual] thoughts and wasting seed. For this reason, Rabbi Hama ben Hanina said that “*his* sins are shaken off” and “*his* sins are forgiven,” in the masculine and referring to the groom, for such sins are not relevant to the bride. This would explain the custom, mentioned by a few *rishonim*, that only the groom fasts on his wedding day and not the bride.<sup>10</sup>

Parallel to the *beraita* in *Kidushin*, we find that Rabbi Yohanan said, “For six months, the Divine Presence waited for the people Israel, perchance they would repent. When they did not repent, He declared, ‘Let their bones swell!’” (*Rosh Hashbanah* 31a)

It is the same as “let his bones swell!” in the *beraita*, and there certainly must be some source for the six month period in this regard, although it is unknown to us. Both sections discuss the forbearance of the Holy One, blessed is He, before He declares “Let...swell” on the sinners, and it seems that these are the sole places in the Talmud and *midrash* that God uses this language, as it were. Therefore, we can connect the two and learn from one to the other. It emerges that, just as God waits until age twenty before he pronounces upon a man “let his bones swell,” if he marries above the age of twenty and his sins are absolved on his wedding day, God waits six more months before proclaiming “let his bones swell.” This is somewhat of a source for permitting the postponement of procreation for six months after the wedding, even past the age of twenty.

However, I do not know a basis to delay procreation for a number of years after marriage; only, one should not protest forcefully against [the practice], for the generation is not worthy. And if the bridegroom is less than age twenty-two or twenty-four, following two different versions of a statement of Rava’s (*Kidushin* 30a), there are those who wish to rule leniently according to the implication of Rashi’s commentary thereon<sup>11</sup> that these time limits were given also regarding taking a wife, but this has not been cited by the *poskim*.<sup>12</sup>

<sup>10</sup> See Rabbi Yissachar Tamar’s comment on this (*Alei Tamar, Yerushalmi Bikurim* 3:3).

<sup>11</sup> Rashi, *Kidushin* 30a, s.v. *me-sbitasar*.

<sup>12</sup> Regarding the issue of calming a woman who is giving birth (mentioned by Rabbi Lau in *Granot*), see my discussion in *Responsum Benei Banim*, 1:#33. Regarding spacing births even prior to the fulfillment of the *mitzvah* of *peru u-revu*, it is well-known that the *ga’on*, my grandfather, *zt”l*, permitted an interlude of two years and more between one pregnancy and the next. See also *Benei Banim* there, #s 30 and 31.