

***VALUES, HALAKHAH AND PESAQ: CONTINUED DISCUSSION OF “HALAKHIC VALUES, PESAQ OR PERSUASION”***

Gil Student, Reuven Singer

***MYSTICISM, HASIDISM AND ESCAPISM: CONTINUED DISCUSSION OF “JEWISH MYSTICISM: MEDIEVAL ROOTS CONTEMPORARY DANGERS AND PROSPECTIVE CHALLENGES”***

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# *Values, Halakhah and Pesaq:* Continued Discussion Of "*Halakhic Values: Pesaq or Persuasion*"

The following interchange sheds light on Rabbi Reuven Matityahu Singer's important article, "*Halakhic Values: Pesaq or Persuasion*," published in the *Tevet* 5763 edition of *The Edah Journal*. Mr. Gil Student, formerly a student at Rabbi Isaac Elchanan Theological Seminary and currently working as a quantitative analyst in finance, challenges R. Singer's central contentions in that article regarding the character of non-formal values within *halakhah*. R. Singer is Rabbi of Shaarey Tefilah Synagogue in Vancouver, British Columbia. Because of the importance and length of the exchange, we present both Mr. Student's and R. Singer's comments here in full—editor.

## Mr. Gil Student Comments on "*Halakhic Values: Pesaq or Persuasion*"

### I. *Halakhic Values*

Rabbi Reuven Matityahu Singer does readers a great service by presenting and analyzing the views of the renowned giant of Torah scholarship Rabbi Yosef Dov Soloveitchik (henceforth, the Rav) on the one hand, as explained by his grandson and close student Rabbi Mayer Twersky, and Rabbi Saul Berman on the other hand, regarding the topic of enforcing halakhic values<sup>1</sup>. May conceptions of halakhic values—of the "spirit of the law"<sup>2</sup>—render an otherwise permissible act forbidden? Does such an act become "*assur*"? As presented by Rabbi Singer, the Rav would allow, or even demand, a halakhic decisor to prohibit an activity that is technically permissible but against the values of *halakhah*, while R. Berman would give a permissive ruling based on the technical *halakhah* and separately advise based on the "spirit" of *halakhah*. It is left to the reader to decide whether these two scholars bear equal authority in this matter, although this reader finds the suggestion that R. Berman's view has

similar weight as the Rav's to be highly implausible.

However, I submit that the Rav's position, as recorded by R. Twersky, is somewhat subtler than R. Singer presents. R. Singer writes, "As we will see, R. Twersky [in the name of the Rav] has staked out a position claiming that halakhic values have binding force in the halakhic system and can engender legal prohibitions of behaviors that are permissible on a formal and technical level" (p. 3). Furthermore, pointing out a contrary report of the Rav's view by Rabbis Aryeh and Dov Frimer, R. Singer writes, "R. Twersky rejects the distinction between 'strict *halakhah*' and '*hashkafah*' drawn in the Frimer article" (p. 4).

My reading of R. Twersky's carefully written article is that his report of his grandfather's nuanced views is consistent with the facts presented in the Frimer article. The Rav's approach to a technically permissible activity that runs counter to the "spirit of the law" is that, while it is

<sup>1</sup> Rabbi Reuven Matityahu Singer, "*Halakhic Values: Pesaq or Persuasion*" in *The Edah Journal* 3:1 (*Tevet* 5763).

<sup>2</sup> I prefer to co-opt this Christian term that is familiar to readers and is, I believe, equivalent to the term "halakhic values".

clearly impermissible, its status is not described by *Hazal* with the term "*assur*". *Hazal* reserved the word "*assur*" for technical violations and instead used terms such as "*ein ruah hakhamim nohe mimenu*" to describe activities that violate the values of *halakhah*. Since technical *halakhah* does not forbid such an activity we cannot call it "forbidden" and, thereby, blur the line between strict *halakhah* and halakhic values, i.e. misclassify different types of halakhic violations. However, it is nevertheless not permitted because halakhic values—the "spirit" of God's commandment—are normative and binding. This, I believe, can be discerned in R. Twersky's article. He writes:

The Rav consistently ruled that these [women's *tefillah*] groups were wrong, but did not invoke the term *assur*. The reason for the Rav's nuanced formulation is that *Hazal* in many instances highlighted the difference between technical and axiological infractions by delineating different categories of impermissible behavior. Whereas the former are always labeled *assur*, the latter, though categorically wrong and impermissible, are classified as *ein ruah hakhamim nohe mimenu*, or alternatively without classification unequivocally censured.<sup>3</sup>

Women's *tefillah* groups may not be a technical violation of *halakhah* and, as such, are not subject to the terminology of *issur*. But they are contrary to the binding "spirit of the law" and are, therefore, unequivocally impermissible. They are "censured" by *Hazal*, i.e. the Sages would disapprove of and disallow these groups, because they violate the implicit values of *halakhah*. While this is clearly a statement that they are not permitted, this is not the same as stating that they are *assur*, which would imply a technical rather than axiological issue.

It is not surprising, then, that the Rav's son-in-law, R.

Aharon Lichtenstein, recently responded to those who wish to utilize technicalities to avoid the obligation of dwelling in a *sukkah* as follows: Even though he concludes that on a purely technical level this is permissible, he nevertheless adds, without using the term "*assur*", that it is not allowed based *inter alia* on the idea at the base of Ramban's famous expression "*naval b'reshut ha-Torah*" (scoundrel with Torah license). Citing another precedent, R. Lichtenstein declares that "[t]his is not just a *derush* or a pious custom, but mainstream halakha. This principle reflects a halakhic approach in all of its power and scope, beyond the restricted formal plane."<sup>4</sup>

Like the Rav, R. Lichtenstein makes clear that the activity can be considered permissible only on a technical level and, when viewed from the over-arching vantage of *halakhic* values, may not be performed. Even if avoiding the obligation of *sukkah* is technically allowed in the situation under question, the activity is still not halakhically allowed for axiological reasons.

## II. Women's *Tefillah* Groups

Regarding women's *tefillah* groups, R. Singer describes how R. Twersky quotes and summarizes the Rav's description of prayer "from the depths" and extends this disapproval of ceremonialism to women's *tefillah* groups. This halakhic value of "from the depths" seems to be in direct opposition to women's *tefillah* groups. However, R. Singer objects that "R. Soloveitchik's beautiful words seem to be a description of the phenomenology of prayer, not an explicit halakhic directive that prayer must be categorized as 'from the depths'" (p. 6). This is a somewhat difficult objection because the Rav's essay was intended to explain the halakhic opposition to ceremonialism in prayer. As the Rav ends his remarks, "[T]herefore the great opposition of halakha to so-called mod-

<sup>3</sup>R. Mayer Twersky, "Halakhic Values and Halakhic Decisions: Rav Soloveitchik's *Pesaq* Regarding Women's Prayer Groups" in *Tradition* 32:3 (Spring 1998), p. 13. The entire article is available online at [http://www.torahweb.org/torah/special/2003/rtwe\\_wtg.html](http://www.torahweb.org/torah/special/2003/rtwe_wtg.html).

<sup>4</sup> <http://www.vbm-torah.org/sukkot/suk-ral.htm>. Cf. R. Aharon Lichtenstein, *Leaves of Faith* (Jersey City:2003), p. 122 where he writes, "Hence, [the *posek*] is painstakingly careful to avoid both outright error and any compromise with either the letter **or** the **spirit** of Halakhah" (emphasis added).

ernization of prayer services which erases the uniquely original in 'worship of the heart.'"<sup>5</sup> Certainly the Rav's explanation of certain *halakhot* can be legitimately extended to other similar issues.

However, what remains absent from R. Singer's analysis is R. Twersky's strongest point. R. Twersky writes, "Women's *tefilla* groups distort not only *tefilla* but also the standing and status of women within *Yahadut*... [W]omen's *tefilla* groups *nolens volens* lead to the inevitable conclusion that the Torah has, God forbid, shortchanged women" (p. 14). When we emphasize the externalities of prayer rather than the dominant inner expression we misrepresent Judaism by implying that the halakhic reality of women's exclusion from certain public aspects of *tefillah* means that they are missing an element from their *avodat ha-Shem*. We are saying that leading *tefillah*, *kaddish*, *qedushah*, etc. enhances one's prayer and, therefore, since women may not do so their ability to pray is handicapped. This is nothing short of a *ziyuf ha-Torah*, a sacrilegious twisting of Jewish values. The truth is the exact opposite, that the heartfelt private prayers of devout women are an integral part of what has sustained us as a people for thousands of years.

While R. Singer (citing R. Dov Linzer) is correct that "[N]ot all values have equal force" (p. 6), a claim to which R. Twersky did not imply the contrary in his article, one

is hard-pressed to accept the suggestion that the particular value germane to this discussion—*ziyuf ha-Torah*—is not halakhically proscribed<sup>6</sup>. This is, then, quite similar to the case facing R. David Zvi Hoffman who R. Twersky cites, regarding conditional *qiddushin* to which R. Hoffman replied that even if conditional *qiddushin* could be done in a technically permissible fashion they would still be impermissible because their institution would give a decidedly incorrect impression that *halakhah* is subordinate to sociological concerns. Otherwise permissible activities may still be disallowed if they distort the Torah. This is why R. Twersky continues, "We must understand and help others to understand that women's *tefilla* groups, sincere intentions notwithstanding, both reflect as well as generate distortions of Torah principles. Instead of forming such groups we must disseminate authentic Torah teachings regarding *tefilla*, thereby fostering genuine, profound religious expression and experience" (p. 15).

### III. *Shabbaton*

R. Singer proceeds to an analysis of the concept of *shabbaton* to illustrate and provide a precedent for the differing approaches of the Rav and R. Berman. Ramban, and, it should be added, Rambam, Ritva, R. Saadia Gaon and possibly Tosafot<sup>7</sup>, proposes that there is a general *mitzvah* of *shabbaton*—resting on *Shabbat* even from actions that

<sup>5</sup>The entire essay can be found in English translation in Joseph Epstein ed., *Shiurei HaRav* (Hoboken: 1994), pp. 82-5. Cf. the Rav's third explanation for the requirement of a *mehitzah* during prayer in "On Seating and Sanctification" in Baruch Litvin ed., *The Sanctity of the Synagogue* (New York: 1959), p. 116.

<sup>6</sup> Cf. R. Shlomo Luria, *Yam Shel Shomo*, Bava Kama 4:9; R. Yishayahu Horowitz, *Shenei Luhot ha-Berit* (Jerusalem: 1975), *Masekhet Shevuot* 33b; R. Eliyahu ben Shmuel, *Responsa Yad Eliyahu*, no. 48.

<sup>7</sup>Ramban, *Commentary* to Lev. 23:24; idem., *Derashah le-Rosh Hashanah* in *Kitvei Ramban* vol. 1 pp. 217-9; Rambam, *Mishneh Torah, Hilkhot Shabbat* 21:1; Ritva, *Novellae* to *Rosh Hashanah* 32b sv *u-ve-ram* (ed. Mossad ha-Rav Kook, cols. 310-1); R. Yeruham Perlow, *Sefer ha-Mitzvot le-Rasag* (Warsaw: 1914), vol. 1 *mitzvah* 34 p. 377; *Tosafot*, Moed Katan 12b sv *makhnis*. Cf. R. Menahem Kasher, *Torah Shelema*, Gen. ch. 39 no. 98 (vol. 6 pp. 1500-1), Ex. ch. 12 no. 339 (vol. 11 pp. 142-3) and in the notes.

Regarding the *Maggid Mishneh's* understanding of the Rambam, I believe that his comments to *Hilkhot Shekhenim* 14:5 indicate his belief that certain rabbinic edicts are formalizations of the general biblical commandments but are not the exclusive modes of fulfillment. Their sources are the general biblical edicts but they are only some of the many ways to carry out these principles. As he writes:

In this, it would not have been appropriate to command the details because the commandments of the Torah [apply] constantly, at all times, and in every circumstance and one is obligated to follow them. Whereas man's characteristics and behavior vary depending on the time and the person.

This, and the entire passage, seems to indicate that the *Maggid Mishneh* agrees with Ramban that there are general obligations and that certain rabbinic enactments are examples, but not the sole manifestations, of these general commandments. This is also how

do not involve forbidden labors—that manifests in specific rabbinic prohibitions and in general, non-specified and otherwise permissible areas. This is consistent with Ramban's practice of noting general biblical commandments that do not have specific manifestations but are nevertheless obligatory. For example, Ramban considers "*qedoshim tihyu*" ("Be holy") to be a biblical obligation and even suggests that a rebellious son is punished, in part, for violating this obligation<sup>8</sup>. Similarly, Ramban explains that there are general commandments of doing "the right and the good" and clinging to God<sup>9</sup>. The obligation of *shabbaton* is taken by R. Moshe Sofer, commonly known as *Hatam Sofer*, as a sufficient reason to prohibit train travel on Shabbat<sup>10</sup>. In agreement with *Hatam Sofer's* use of the Ramban's principle as normative *halakahah*, R. Singer cites R. Isaac Herzog, R. Chaim David Halevy and R. Eliezer Waldenberg. One can add to this list R. Ya'akov Prager, R. Ya'akov Breisch, R. Yitzhak Weiss, R. Moshe Feinstein, R. Hayim Elazar Shapira and even the Rav himself<sup>11</sup>. R. Singer also cites R. Benzion Uziel who agrees in principle with Ramban, but disagrees with *Hatam Sofer's* application.

On the other side is R. Mordekhai Horovitz who does not believe that the concept of *shabbaton* empowers contemporary rabbis to forbid otherwise permissible acts.

We thus have not a simple *mahloket ha-poseqim* (dispute among halakhic decisors), but a clear consensus with a lone dissenter. On one side lie some of the leading halakhists of the last century and on the other side is a solitary, relatively unknown rabbi (so unknown that R. Singer even feels the need to introduce him to us). The Rav, in his approach, is in the company of a cadre of well-known and accepted *poseqim* while R. Berman is almost, but not quite, alone. Even if the difference in expertise between the two scholars was not as vast as it is, the fact that the Rav follows such ample precedent while R. Berman has almost none should give us pause.

#### IV. Closing

Another point I believe needs to be made, given the recent implementation of a controversial article in a prior issue of this journal, is that R. Singer's article is solely about variant approaches in issuing halakhic rulings. From the perspective of a layperson there should be no difference between whether the "spirit of the law" is transmitted as part of a *pesaq* or separately. Either way, a religious person should zealously conform to both *halakahah* and halakhic values. Since we, as traditional Jews, believe that our *mesorah* represents the revealed will of God, it behooves us to never consciously—and certainly

R. Eliezer Waldenberg understands the *Maggid Mishneh* in *Tzitz Eliezer* 1:21:23, as do R. Moshe Feinstein in *Iggerot Moshe, Orah Hayim* vol. 5 20:20 and R. Aharon Lichtenstein in "Does Jewish Tradition Recognize an Ethic Independent of Halakhah?" in *Contemporary Jewish Ethics*, ed. Menachem Kellner (New York: 1978), pp. 79-80. Cf. however R. Yosef Babad, *Minhat Hinukh*, 297 (ed. Makhon Yerushalayim, vol. 2 p. 430); R. Avraham Bornstein, *Eglei Tal, petihah* n. 2; R. Meir Simhah of Dvinsk, *Meshekh Hokhmah*, Deut. 5:12 who limit Ramban's view to rabbinic ordinances. Despite this, none of them present the argument that there cannot be non-specific commandments. They only argue that *shabbaton* is specific.

<sup>8</sup>Ramban, *Commentary* to Lev. 19:2, Deut. 21:18 cited by R. Twersky (pp. 6-7, 17 n. 5). Cf. *Iggerot Moshe*, *ibid.*, *Yoreh Deah* vol. 2 no. 101, vol. 3 no. 35.

<sup>9</sup>Ramban, *Commentary* to Lev. 19:2, Deut. 6:18, 13:5. Cf. *Iggerot Moshe, Orah Hayim* *ibid.*; R. Daniel Z. Feldman, *The Right and the Good* (Northvale:1995), p. xviii

<sup>10</sup>*Responsa Hatam Sofer*, 6:97. R. Singer only quotes part of the reason that *Hatam Sofer* believes train travel to be contrary to the principle of *shabbaton*—that one's body is jostled. *Hatam Sofer* adds to this, "[A]nd he cannot be involved in the matters of Shabbat on Shabbat that he is accustomed to do in his house [i.e. *oneg Shabbat*], and he approaches his place of business on Shabbat so that he may be there on the weekday."

<sup>11</sup>R. Ya'akov Prager, *Responsa She'elat Ya'akov*, no. 45; R. Ya'akov Breisch, *Responsa Helkat Ya'akov*, *Orah Hayim* 63:8, 70:2; R. Yitzhak Weiss, *Responsa Minhat Yitzhak*, vol. 2 106:15,18; R. Moshe Feinstein, *Iggerot Moshe, Orah Hayim* vol. 5 20:20, R. Hayim Elazar Shapira, *Responsa Minhat Elazar*, 4:18; R. Yosef Dov Soloveitchik, *Shi'urim le-Zekher Abba Mari*, vol. 1 p. 59ff.

not publicly—reject what God wants us to do. Even though we each retain the autonomy to make our own decisions, using our free will to follow *halakhah* in letter and in spirit is the primary job of every Jew. Whether halakhic values are incorporated in a halakhic ruling or not, we are still bidden to "choose life" (Deut. 30:19) or, in the words of Rabban Gamaliel, to "make His will [our will]" (*Avot* 2:4).

I conclude with thanks to R. Singer for raising this important issue in a public forum. May people be enlightened by this ongoing discussion and become inspired to strive to conform with Torah in all its nuances.

## Rabbi Reuven Singer Responds:

I thank Mr. Gil Student for his thoughtful comments on my article. I want to acknowledge that his comments were made in the spirit of *divrei hakhamim benahat nishmaim*. I would like to share these responses to his words in the same spirit.

There is one theme that runs through Mr. Student's comments. He alleges that R. Berman's opinion on halakhic values is an exceedingly weak and isolated position. There are three ways in which Mr. Student suggests this: First, he minimizes R. Berman's stature as an authority. Second, he eliminates any debate over Rav Joseph B. Soloveitchik's position. Third, he adds to the list of contrary positions a number of *rishonim* and *aharonim*, thereby further isolating R. Berman's position. Let me respond to each of these three points in turn.

### I. Rabbi Berman as Halakhic Authority

Mr. Student writes, "this reader finds the suggestion that R. Berman's view has similar weight as the Rav's to be highly implausible," and later "even if the difference in

expertise between the two scholars was not as vast as it is..." It does not seem useful to put *talmidei hakhamim* in competition with each other over "*gadlut*."<sup>12</sup> Obviously Rav Soloveitchik was a towering personality with extreme *yediat ha-Torah* who made unparalleled contributions to Torah learning. Yet it is not constructive to engage in a comparison of R. Berman with the Rav. R. Berman is a formidable *talmid hakham* in his own right, with great breadth of knowledge and tremendous analytical skills. His thoughts and insights bear careful scrutiny, no matter who might disagree with him.

On this point, a *teshuvah*<sup>13</sup> of R. Moshe Feinstein bears noting. A rabbi asked Rav Moshe whether or not he should refrain from moving to Bnei Brak given that he sometimes disagreed with the *pesaq* of the Hazon Ish (of Bnei Brak). Rav Moshe answered that he need not be concerned about disagreeing with *gedolim* as long as it is done with *derekh erets*. Rav Moshe notes that Rava<sup>14</sup> told his own students to feel free to disagree with him when their own positions differed from his decisions. It is essential that rabbis do not refrain from articulating their positions out of deference to the stature of teachers and *gedolim*. It is through inclusion and due respect of all thoughtful and informed opinions that the depths of Torah can be reached.

Rav Moshe goes further in another *teshuvah*.<sup>15</sup> He suggests that in matters of wisdom sometimes the less expert sage has an advantage over the greater expert because "*l'fi hurpa shebashta*"<sup>16</sup> (according to the sharpness is the blunder). Rav Moshe uses this principle to suggest that as many doctors as possible must be involved in determining whether an ill individual is terminal. He states that even doctors of lesser stature should be consulted because sometimes they have insight where greater doctors fall short. This all points to the Rambam's aphorism in his introduction to *Shemoneh Perakim*: "accept the

<sup>12</sup>See R. Yehudah Herzl Henkin, *Bnei Banim*, Vol. II, *mamar alef, siman* 19

<sup>13</sup>*Igrot Moshe* YD 3:83

<sup>14</sup>*Baba Batra* 130

<sup>15</sup>*Igrot Moshe* HM 2:74

<sup>16</sup>*Baba Metzia* 96b

truth from whoever says it."

## II. Understanding Rav Soloveitchik's Position

While I stand by my position that R. Berman's view bears consideration even in the face of Rav Soloveitchik's view, it is not at all clear that he disagrees with his revered teacher. I was careful in my article not to attribute R. Twersky's position to the Rav because there seems to be some controversy over what exactly the Rav's position is. Obviously R. Twersky claims his understanding is equivalent with his grandfather's. Mr. Student also equates the Rav's and R. Twersky's position, but this is not self-evidently true. He goes further and writes that his "reading of R. Twersky's carefully written article is that his report of his grandfather's nuanced views is consistent with the facts presented in the Frimer article." Yet the Rabbis Frimer clearly state "R. Joseph B. Soloveitchik, like R. Feinstein, was of the view that a women's prayer service, if properly structured, could be conducted in accordance with Halakhah." This statement based on R. Frimer's extensive research is at odds with the entire thrust of R. Twersky's position. It is obvious that Rabbis Aryeh and Dov Frimer do not share R. Twersky's analysis of the Rav's position. This important controversy as to the Rav's position is omitted in Mr. Student's comments and he assumes throughout his piece that R. Berman is disagreeing with his teacher, the Rav. Neither R. Twersky's nor Mr. Student's suggestions that the Rav understood his opposition to women's prayer groups as making them legally impermissible are compelling. To be clear, this is not to suggest that the Rav took a position that matches the one outlined by R. Berman. I frankly do not know what the Rav's position is. Nevertheless, I believe Mr. Student's equating Rav Soloveitchik's stance with R. Twersky's and ignoring the controversy does not do justice to the complexity of the debate.

## III. The Rishonim

Mr. Student amasses a long list of *rishonim* and *aharonim* who he suggests disagree with R. Berman's position.

Regarding *rishonim* he writes "Ramban, and it should be added, Rambam, Ritva, R. Saadia Gaon and possible Tosafot, proposes that there is a general mitzvah of *shabbaton* — resting on Shabbat even from actions that do not involve forbidden labors—that that manifests in specific rabbinic prohibitions and in general, non-specified and otherwise permissible areas." Mr. Student pays no heed to my suggestion that the Ramban is ambiguous. I stated that all the examples of *non-shabbaton* activities that the Ramban brings are activities against which prohibitions existed in Talmudic times, at which point *Hazal* had the ability to institute technical prohibitions. For the sake of clarity and emphasis I will list here the sources in the Talmud for each of the Ramban's examples:

Measuring out crops of the field — *Beitzah* 29a (*lo yimod adam seorim*)

Weighing fruits and gifts — *Beitzah* 3:6

Filling the barrels with wine — *Beitzah* 3:8

Clearing away the vessels — *Shabbat* 126b, *Mishnah* and the *Gemara* following

Moving stones from house to house *Shabbat* 46a (*kol tzrorot shebahatzer*) and implicit in laws of *muktseh* scattered throughout *Shas*

Loading heaps on asses-- *Beitzah* 2:4; 5:2; *Eirubin* 100a

All manner of burdens they would bring on a festival- *Beitzah* 4:1

Shopkeepers giving credit — *Shabbat* 23:1

Workers would rise early to go to their work and hire themselves out for such works — *Shabbat* 23:3

It is striking that the Ramban did not bring one example of a violation of *shabbaton* that does not appear in the

Talmud. Clearly Ramban "proposes that there is a general *mitzvah* of *shabbaton*... that manifests in specific rabbinic prohibitions." However it is problematic to suggest with any degree of certainty that the Ramban serves a source to prohibit "non-specified and otherwise permissible areas."

Ritva (*Rosh Hashanah* 32b) records a similar statement to the Ramban's regarding *shabbaton* and indeed quotes this position in the name of the Ramban. Just as on the Ramban's list, Ritva's list of violations of *shabbaton* all are prohibitions instituted by the talmudic rabbis. In fact, Ritva uses this concept of *shabbaton* as a root for *shevut* from the Torah to explain how The Rabbis felt authorized to decree prohibitions that nullified positive biblical precepts. To suggest that Ritva would imagine that contemporary rabbis have the power based on their understanding of the *telos* of *shabbaton* to override *mitzvot aseh* seems farfetched. Ritva does not serve as an explicit source for the authority of contemporary rabbis to render impermissible activity outside of the *telos* of *shabbaton*.

Mr. Student also seems to overlook my analysis of the *Maggid Mishnah*. I noted that the *Magid Mishnah* equates the opinions of the Rambam and the Ramban. He then explains their understanding of *shabbaton*. He states that either the Torah empowered sages to determine the category of *shabbaton* or the sages merely used the *shabbaton* as an *asmakhta* for their rabbinic decrees. Either way, as I noted, the *Magid Mishnah* presumes that all prohibitions flowing from *shabbaton* must be enacted by an authoritative rabbinic body. This would preclude contemporary rabbis from rendering activities impermissible merely because they found certain behaviors outside of the *telos* of *shabbaton*.

#### IV. *The Aharonim*

Bolstering his argument from *aharonim*, Mr. Student writes, "In agreement with *Hatam Sofer's* use of the Ramban's principle as normative *halakhah*, R. Singer cites R. Isaac Herzog, R. Chaim David Halevy and R. Eliezer Waldenberg. One can add to this list R. Ya'akov Prager, R. Ya'akov Breisch, R. Yitzhak Weiss, R. Moshe Feinstein, R. Hayim Elazar Shapira..." While I must admit I am not familiar with the approaches to *shabbaton* of these eminent *gedolim*, I would take issue with the inclusion of R. Moshe Feinstein as an advocate of the Hatam Sofer's position. *Igrot Moshe* (*Yoreh Deah* I:44) suggests that Rav Moshe rejects the use of *shabbaton* to create normative *halakah*. There Rav Moshe addresses the issue of traveling on buses and trains on Shabbat. He rules that it is forbidden for a number of reasons all seemingly technical and not axiological. First *marit ayin*. Those who see individuals traveling on public transportation will suspect that they have paid for a ticket on Shabbat or carried the ticket violating the prohibition of *hotza'ah* or *tiltul muktzeh*. In cases where there is no charge for public transit R. Moshe still forbids. Travel by public transit is known to normally be for purposes of commerce and work, therefore those who avail themselves of bus and train service are guilty of *hillul ha-Shem*. This seems to be a variation on the *marit ayin* of the case where purchasing a ticket is necessary.<sup>17</sup> Rav Moshe then compares traveling by trains and busses to the prohibition in the *gemara* of carrying a man on a chair on Yom Tov in a particular fashion because it is typically used to travel long distances.<sup>18</sup> Rav Moshe reasons that trains and buses also are typically used to travel great distances and therefore fall under the same prohibition. Glaringly absent from this whole discussion is any mention of *shabbaton* and the Ramban's comments thereon. Surely if R. Moshe felt

<sup>17</sup> Presumably this is *hillul ha-Shem* because the appearance of actually going to work on *Shabbat* undermines the whole character of the day. Notice that despite this, the issue remains *marit ayin/hillul ha-Shem* and not *shabbaton*.

<sup>18</sup> Travelling long distances is *uvda d'hol* – weekday activity. One might argue that this is an axiological concern in the spirit of *shabbaton*. However this seems not to be the case. If *uvda d'hol* were sufficient as an axiological concern Rav Moshe would not have needed to cite a *gemara* that uses a parallel case. He could have forbidden riding on buses simply because it is a common weekday activity whether the bus travels near or far. The fact that Rav Moshe felt it necessary to connect public transit travel to the case of *yikatef* through the similarity of great distance shows he felt that axiologically *uvda d'hol* was insufficient to forbid it.

that *shabbaton* had the halakhic import that the Hatam Sofer claims it has, he would have stated so here.

Leaving aside the issue of *shabbaton* and turning to the issue of *qedoshim tihyu* we find an explicit support R. Berman's position. While R. Twersky understands the charge of *qedoshim tihyu* to engender actual halakhic prohibitions, R. Berman suggests that *qedoshim tihyu* "is the vehicle through which we are urged toward the use of our autonomous understanding of God's role in the world." A reading of the Ramhal's *Mesilat Yesharim* (ch. 13) shows that R. Luzzato's approach is closer to that of R. Berman. He writes:

"Know that there are three levels: There are the prohibitions themselves, and there are their fences which are the decrees and safeguards that our sages of blessed memory decreed on all Israel, and there are the distancings that are incumbent upon every single self-denying individual to do to encroach upon his own and to build fences for himself, that is to leave behind the licenses themselves that were not forbidden to all Israel and to separate in order to be far from evil a great distance. And if you will ask, from where may we add on to the prohibitions... The answer is that asceticism is surely necessary and crucial, and our sages of blessed memory admonished (us) concerning this. That is what is

meant when it says "Be holy," – be separated.

For the Ramhal, *qedoshim tihyu* is not directed to the *poseq halakhah*. It is rather directed to the individual to voluntarily and autonomously move beyond the halakhic prohibitions. A wise and sensitive rabbi can surely be of assistance in helping individuals along this path, yet he cannot compel through *halakhah* this directive of *qedoshim tihyu*.

#### IV. Conclusion

R. Berman is a significant *talmid hakham* and his opinion cannot be dismissed because he does not "measure up." Rav Soloveitchik's position on this issue is a matter of debate. According to many of his students, his positions is the same as R. Berman's. R. Berman's general approach to halakhic values as expressed in the directive of *qedoshim tihyu* is supported by none other than the Ramhal. With regard to *shabbaton*, the Ramban's approach is ambiguous and it is not at all clear that R. Berman is working outside of his view of *shabbaton*. What is clear that R. Berman is working within the parameters of the *Magid Mishnah*, the *Matei Levi*, and R. Moshe Feinstein, and thus R. Berman's position is neither weak nor isolated. Rather his approach to the place of the *telos* of *halakhah* in general and in the specific issue of *shabbaton* is grounded in the *rishonim* and *aharonim*.