

## REVIEW ARTICLE

*Melech Schachter*

Rabbi Melech Schachter, spiritual leader of Congregation Adath Jeshurun of the Bronx, teaches Rabbinics, Jewish Social Philosophy, and the Principles of Judaism at RIETS, Stern College, and The School of Social Work, all of Yeshiva University. An accomplished talmudist, he received his doctorate from Dropsie College. He is the author of the recently published *Ha-Mishnah be-Bavli vi-Yerushalmi*, reviewed in our "Briefly Noted" section of this issue of TRADITION.

## PRACTICAL HALAKHAH IN THE SPACE AGE

So fast is our pace of living, that we have become all but immune to the radical changes that are continuously taking place in this "space age" or "atomic era." Obviously if society and the individual go through revolutionary changes, the law, governing human behavior, is confronted with the task of making its categories appropriate to the new situations. Secular law, which is man-made, finds it comparatively easy to alter those parts of the Constitution which cannot be reinterpreted and adjusted. Religious law, however, which claims God as its source, is essentially as immutable as the laws of Nature. The task of Halakhah (Jewish Law) today is therefore limited to that of creative interpretation and reinterpretation of long established principles and their application to the modern situation.

The analogy of religious and nat-

ural laws is to the faithful a matter of course, since they both originate from the same Divine Source. The unprecedented progress in the realm of science has neither made fire cease burning, nor water fail to extinguish it. Similarly, the injunctions of the Torah, the do's and the don'ts, have not ceased to operate in our Space Age. Consequently, just as the scientists have continuously been experimenting with and manipulating the Laws of Nature in their respective laboratories, so have rabbinic scholars all through the ages been interpreting and reinterpreting Divine Law to render it applicable to newly created conditions.

It is precisely this faith that the Halakhah contains within itself, in one form or another, the principles that can be applied to all new, emergent situations, that is at the basis of modern traditional Judaism. The

## TRADITION: A Journal of Orthodox Jewish Thought

search for the appropriate legal constructs in our vast literature is, therefore, one of the most important tasks of modern talmudic scholarship. The great responsa literature (*She'elot Uteshuvoth*, or case law) is the best example of this method of finding relevant ancient sources adequate to the newest of conditions.

Of late, this historic process has not always been employed with great zeal. A kind of aversion to decision-making, a *yirat ha-horaah*, has seemed at times to paralyze many of our contemporary scholars. And yet if the faith that the Torah's words are relevant to modern man, and the faith in the practicability of the Halakhah and its viability in the modern world, are to be redeemed, this classical method must be returned to with the clear goal of arriving at practical decisions, teaching Jews how to live the life of eternal Torah amidst the temporariness and exigencies of an industrial society in an age of rapid scientific advance.

Happily, we now have before us two volumes of a new series, called *Noam*\* (pleasantness), which are the beginning of an answer to our problem: a courageous compilation of Space Age responsa.

"Modern problems of utmost urgency have been facing Torah-true rabbis, and because of their complexity and their grave nature, we find it difficult, in many a case, to arrive at a decision." This is the introductory remark of Rabbi Leo Jung, chairman of the American Commit-

tee for *Noam*, who is the moving power behind this grand new enterprise. A staff of the most outstanding talmudic scholars, associated with the Torah Sheleimah Institute, are engaged in research, sifting and analyzing the vast Responsa literature and then applying the principles to the contemporary problems of observance in the face of radically changed conditions on the social, economic, and — above all — scientific planes.

The only way to appreciate the scope and the courage of these excellent volumes is by reading them carefully. Failing that, all a reviewer can do is digest some of the more significant and some of the intriguing cases for the reader, who is reminded that such brief summaries may not be relied upon as a valid guide for his own practice.

### I.

#### CONDITIONAL MARRIAGES

The most vexing problems in the social sphere are in the realm of marital relationship. Today marriages are dissolved civilly in court and the religious severance by a *get* is frequently ignored. Even when one partner wants it, the other may spitefully refuse to cooperate. In some cases women remain *agunot* and never remarry. In most cases they ignore Jewish Law and remarry civilly, and quite often also with the benefit of clergy — of the Reform and sometimes the Conservative wing — thus violating the commandment against adultery, and

\**Noam: A Forum for the Clarification of Contemporary Halakhic Problems*, (Jerusalem: Torah Sheleimah Institute) Vol. I, 5718 (1958), 312 pages; Vol. II, 5719 (1959), 324 pages.

## *Practical Halakhah in the Space Age*

giving birth to illegitimate children (*mamzerim*).

Some twenty odd years ago the Conservative Movement attempted to copy what the French Rabbinate had suggested half a century ago, namely, to introduce conditional marriages and thus remedy the situation. The marriage formula would read something like this: "With this ring I thee wed, provided our marital relationship will never be dissolved civilly." (For the sake of brevity, the reviewer cannot enter into the complex legal problems involving the exact wording of the formula). The implication is that should the marriage ever be dissolved in a civil court, we would consider the man and the woman as if they had never been married. Their relationship would be considered as having been promiscuous and the offspring, if any, would assume the status of children of an unwed mother—though unsavory, yet not illegitimate (*mamzerim*) according to Halakhah.

Precedent for such procedure is found in the Responsa literature of the 15th century, later incorporated in the *Shulchan Arukh*. Because of the prevalent persecutions, some Jews converted to Christianity. Consequently, a childless Jewish widow, whose brother-in-law was an apostate and who might refuse to grant her *chalitzah*, would often be doomed to remain unmarried for the rest of her life. The solution then suggested was that whenever a Jew whose brother is an apostate marries, he should stipulate that in the event he dies without issue, the wedding should retroactively be invalid.

The greatest talmudic scholars nevertheless rejected the suggestion of the French rabbinate and a repeat performance took place in the late 30's when all Orthodox rabbis unitedly rejected the Conservative revival of the plan. Conditional marriages would do away completely with the entire biblical law of divorce and, far worse, the sanctity of married life would totally disappear. Even the precedent referred to was met with serious opposition on the basis of a talmudic dictum that no marriages are to be contracted on a conditional basis. If an exception was made in the case of *Chalitzah*, it was because of the improbability that the man will die young and childless and the woman will want to remarry and the apostate brother-in-law will refuse to grant her *chalitzah*. In that case only, when all these unlikely possibilities concur, the original marriage ceremony would be invalid.

There is also the psychological element. No man wants to consider his continuous sexual relationship with the woman to whom he is civilly wedded as promiscuous. This psychological rejection, established in the Talmud, may perhaps be ignored in the *chalitzah* case, because the realization that their relationship through the years was not really sanctioned comes at a time when the man is no longer alive. However, in the many divorce cases with which we must deal today, this psychological consideration is strong enough to nullify the original condition made at the wedding, and to consider each couple tied with the strong marital bond which can be dissolved only by means of a *get*.

II.

ISRAELI BONDS

On the economic plane a vital question such as this arises: In order to make it possible for the State of Israel to expand economically and to absorb new immigrants, the Israeli Government issues bonds yielding a specified interest. Is it not biblically forbidden to lend money to a Jew on interest?

The answer is clearly worded: The law prohibiting the receipt or payment of interest is limited only to a loan extended to one or more Jewish individuals, such as partners in a business, provided each one bears a personal liability for the debt incurred. In a partnership, the personal assets of each partner may be seized by a creditor to pay off partnership obligations. However, the case of a corporation, for example, is radically different, since its individual shareholders are under no obligation to pay its debts. One of the chief characteristics of a corporation is the exemption of its members from personal liability for the debts of the corporation, beyond the amount of their respective shares. Hence, it is permissible to borrow from or loan to a bank on interest, even though there may be Jews among its directors and shareholders. The same reasoning is applicable to the State of Israel. Neither Ben Gurion nor any other official is personally liable for the debts incurred by any of the bond investments. It is the State of Israel as a corporate body that is responsible for the payments of both principal and interest.

III.

ARTIFICIAL INSEMINATION

The most provocative problem on the scientific plane is that of artificial insemination. Since the fertility period is 14 days prior to menstruation, a problem arises when it coincides with the *niddah* period, i.e. within the number of "the seven clean days" observed before *tevilah*. Is it permissible in such a case to seed the woman artificially with her husband's sperm? Some scholars are of the opinion that the extraction of semen, not in the natural manner, constitutes Onanism. However, the majority of opinions tend to be lenient in this respect. As long as the effusion of semen is not in vain it is permissible. If more than a decade of childlessness has passed and two reliable physicians maintain that by artificial insemination during the fertility period the wife could conceive, the lenient view may be followed.

The relationship of the child to the father likewise presents a problem. Is there really no difference between normal and artificial insemination, i.e. is the child a *kohen* if the father is one? Are the laws of honoring and fearing a father applicable? Will the child have to observe the laws of mourning when father dies? And what about inheritance? Is that marriage considered blissful to the extent that the law of *chalitzah*, following the demise of a childless husband, is inapplicable?

There are those who maintain that artificial insemination is comparable to the transplanting of an

## Practical Halakhah in the Space Age

organ (kidney, eye, etc.) from one human being to another, in which case it is held that upon detachment all previous relations come to an end. The majority of opinions hold that the fatherhood of the child depends exclusively upon the source of the sperm. Yet, some of the above questions remain doubtful.

The problem of artificial insemination grows to extremely serious proportions when the husband is sterile and the donor of the sperm is someone other than the husband. Would the woman in this case be regarded as having committed adultery and consequently have to be divorced from her husband? Would the child bear the stigma of illegitimacy (*mamzer*) and be forbidden to marry a legitimate Jewish person?

The consensus of opinion is that illegitimate sexual relationship implies close familiar contact. (Cf. the biblical term "the man that lieth with..." Lev. 20:11f.) However, in relation to a married woman the Torah mentions the term "seeding" (*ibid.* 18:20) which may include artificial insemination even though there is no intimate contact with another man. Again, the lenient viewpoint is adopted, and the woman is not considered an adulteress. There are, however, a number of reasons why such behavior is considered abominable, foremost of which is the possibility of the offspring eventually contracting an incestuous marriage, i.e. marrying a child of the same unknown donor. The sanctity of married life and the emphasis on the geneological order of father and son simply rule out such unchaste behavior.

As for the child, the lenient view is again upheld, notwithstanding the dissenting viewpoints. The illegitimacy of a child depends upon an adulterous relationship. Artificial insemination from one who is not the husband is not to be sanctioned, yet is not considered an adulterous act and the offspring therefore bears no stigma of illegitimacy. One scholar, however, points out that any child whose paternal ancestry is unknown is considered a *shetuky* and is rabbinically forbidden to marry a legitimate Jewish child.

After going through all the eight articles published in the first volume of *Noam* on this subject, one gets the feeling that in a desperate case a religious divorce (*get*) may be suggested as part of a detailed halakhic procedure. The donor in this case should be a non-Jew, in order to avoid the possibility of biblically forbidden incest. (A boy and a girl born from two Jewish mothers, having a common non-Jewish father, may from the purely biblical viewpoint marry one another. Rabbinically such a union is forbidden.)

The subject is by far not exhausted. There is for example the question whether the child, if a girl, may subsequently be married to a *kohen*. Has the donor fulfilled thereby the biblical command to reproduce: *piryah verivyah*? If the child is a boy, may he be circumcized on the eighth day when it occurs on the Sabbath? Is a Jewish doctor allowed to assist at the artificial insemination of a married woman (using donor sperm), even after she has obtained her husband's consent? What if the woman is not married? Would artificial insemination be sanctioned in the case of a childless widow, the

## TRADITION: A Journal of Orthodox Jewish Thought

donor being the brother of the deceased, as a form of *Yibum*?

### IV.

The following account of all the other problems and solutions, extremely abbreviated, eloquently speaks for the timeliness and utilitarian aspects of the *Noam* series.

**ASTRONOMY:** Does a bright ray before dawn constitute "the rise of the morning star" after which all morning prayers may be recited?

It depends upon the intensity of light within the ray, because after an astronomical analysis it has been established that certain rays appear on the horizon long before dawn.

**FINGERPRINTS:** To what extent is the testimony of fingerprints halakhically admissible?

In capital punishment fingerprints are insufficient proof. To identify a thief by means of fingerprints and force him to pay back the entire theft is a matter of dispute among scholars, the likelihood being that it is valid proof. Fingerprints identifying a dead person are sufficient identification to permit his wife to remarry.

**TAPE - RECORDER, TELEPHONE, AND RADIO:** Is the appointment of an agent (or witnesses, to sign a *get* for example) on a tape recorder valid? What about appointing an agent over the telephone or radio? The same questions may be extended to rendering testimony or blowing the *shofar* or reading the *megillah* using any of these media, carrying the voice to distant places or preserving it in a recorded form to be heard at a later time.

Tape-recording is not accepted as a proper medium in any of these

respects. Telephone and radio are acceptable. The one exception is the precept of the *shofar*, because the sound of the *shofar* must be pure and direct. (The sound of the *shofar* over a microphone is likewise unacceptable. M.S.)

**MACHINE - MADE . RELIGIOUS ARTICLES:** A prerequisite in the weaving of *tzitzit* is *lishmah*, that they be prepared exclusively for the purpose of the *mitzvah*. Are machine-woven *tzitzit* acceptable?

When the switch is put on and the motor is set in motion, the operator (a religious Jew) should declare that he does it exclusively for the sake of the *mitzvah*. This statement should be repeated several times during the operation. (The same applies to the baking of the *matzot* for the Seder nights. M.S.) Thus, the element of free human consciousness and volition in the religious performance is preserved.

**HOSPITALS:** Is it permissible for a *kohen* to visit the sick in a hospital, where there is a likelihood that one or more patients have expired?

Scholars tend to be lenient on this question, since the probability of a dead body at that particular moment of the *kohen's* visit is not necessarily great. It is a known practice of the hospitals to expedite the removal of deceased patients to the funeral parlor or to the morgue of the hospital. The morgue has a special exit and is completely shut off from the rest of the hospital so that legally it is permissible for a *kohen* to visit the hospital.

**PHYSICIAN'S PROBLEM:** Which receives preference—the obligation to render testimony in someone's behalf or the pledge giv-

## *Practical Halakhah in the Space Age*

en to the patient not to divulge his personal condition? The halakhic decision on this ethical problem is: Honoring the pledge is preferable.

**AIRPLANE:** Does one have to recite the *Gomel* blessing, the special thanksgiving benediction, after an airplane flight, as one must after a sea voyage?

The *Gomel* benediction should be recited without pronouncing the name of God. If some trouble had developed during the flight and one's life was in jeopardy, the benediction should be recited in its usual form.

**HEARING AID:** Is the use of a hearing aid permitted on the Sabbath?

It is permitted only if the switch is turned on before the Sabbath and proper provision made (such as the use of adhesive tape on the switch) not to yield to habit and shut it off on the Sabbath. The use of hearing aids equipped with mercury cells and transistors allowing the battery to be on all the time is obviously preferable.

Talking to one who is wearing a hearing aid constitutes no Sabbath violation. Even if the speech should influence the current, it is momentary and negligible. Nor is it comparable to speaking over a microphone, because the prohibitive aspect of magnifying sound (*mashmia kol*) is not applicable here—the voice is not magnified to other people. As for the one wearing the hearing aid, the voice reaches him not in a magnified form but only in the same tone audible to others.

**OTHER SABBATH PROBLEMS:** Q: Does opening a refrigerator on the Sabbath constitute a violation, since the warm air ad-

mitted causes a rise in temperature and brings about the starting of the motor?

A: Some prohibit it. Others permit it while the motor is in operation. Still others permit it at all times. The permission is based upon the sound principle that the prohibition not to cause any work on the Sabbath depends upon the degree of immediacy between the effect and the cause.

Q: Is it permissible to read a newspaper which was printed on the Sabbath?

A: When printed by Jews, it is not permissible. When printed by non-Jews, it may be bought from the newsstand but not obtained through subscription.

Q: Is it possible to surround New York City with an *eruv* and thus avoid an enormous amount of Sabbath violation?

A: It is possible and extremely advisable, the scholarly opinions to the contrary notwithstanding.

**SABBATICAL YEAR:** How sound is the basis upon which the Israeli Rabbinate introduced the custom of selling the Holy Land to an Arab for the duration of the Sabbatical year?

It is very sound for many reasons, despite the vituperative attacks on the Chief Rabbinate from certain extremist elements.

**CIVIL MARRIAGES:** Does a couple married civilly require a *get* in order to dissolve their marital bond?—i.e., is a civil marriage regarded as religiously valid *de facto*?

On the basis of the established rule that no man wishes to consider his continuous sexual relationship with a woman promiscuous, the

## TRADITION: A Journal of Orthodox Jewish Thought

marital bond is strong enough to warrant a *get* for its dissolution. There are some who differ with this viewpoint. They hold that one who does not care for a religious ceremony is not presumed to be troubled by the charge that he is living promiscuously all his life-time.

**INTERMARRIAGE:** What is the status of a Jew married to a gentile woman insofar as his burial is concerned?

The injunction to bury the dead is applicable to him as well as to any other Jew. He should, however, be barred from a Jewish cemetery.

**TOURISTS:** Must American tourists visiting Israel observe the second day of each holiday?

Yes. The prayers offered must also be that of the holiday.

**MILITARY FUNERALS:** Are military funerals, with their flowers and gun-salutes, a violation of Jewish tradition?

The law not to follow non-Jewish customs seems to apply only to customs bearing a religious character. Consequently, flowers and gun-salutes, having no specific religious coloration, should be permissible. However, the opinion of the Gaon of Vilna, not to follow any new custom from non-Jewish sources that we would otherwise not have adopted, merits consideration.

**HERETIC:** Is it permissible to sell *trefah* food to a non-observant Jew?

It is not, even if *trefah* food is easily available elsewhere.

### V.

In the introductory remarks, the editor points with satisfaction to the collection of various papers on one

subject and their respective presentation in their entirety rather than in a serialized form. In this way the student gets a full picture of each problem from every available halakhic aspect, and then can make his personal decision in accordance with the most logical, authoritative, and convincing viewpoints. Some of the articles represent methodology in its best form, so much so that the reader wonders why the other papers could not have been presented in the same way. Surely, an outline of all papers in the same systematic manner, including the hundreds of interesting points casually interspersed, would be a most welcome addition to the publication.

An article here and there could have been deleted. There is, for example, a discussion on the importance of the second day of Shavuot based upon mystic concepts drawn from the Kabbalistic writings of Cordovero, Luria, the founder of Chabbad, and the Rebbe of Pershische. An article of this nature, though representative of the genuine Jewish spirit, can nevertheless not be clearly classified as Halakhah, to which the *Noam* publication is dedicated. In connection with the discussion of artificial insemination, the same author writes a short article based upon a fantastic legend, namely, that Dinah was originally conceived by Rachel and later transplanted into the womb of Leah. While the legend of Ben Sira had to be included because in the history of Halakhah it served as the starting point for a vast literature directly applicable to the modern phenomenon of artificial insemination, the Dinah legend is a disturb-



*Practical Halakhah in the Space Age*

ing element in the otherwise purely logical treatise. The critical analysis of the halakhic work, and perhaps forgery, *Besamim Rosh*, should also have been omitted, since *Noam* is dedicated exclusively to the clarification of modern halakhic problems.

These points of criticism are neg-

ligible in comparison to the immense accomplishment and most impressive presentation of halakhic problems and their solutions. Blessed be the ones who make this truly great and most timely contribution possible. They have demonstrated that the "ways of Torah" are indeed *Noam*, or "pleasant".