REVIEW OF RECENT HALAKHIC PERIODICAL LITERATURE

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There are today probably little more than half a dozen periodicals devoted exclusively to rabbinical studies. About equally divided between Israel and America, they are all published in Hebrew and at intervals varying from one to six months. Their contents may be subsumed under two principal headings: academic dissertations on talmudic themes (*Chiddushei Torah*) and practical Halakhah, usually in the form of responsa to topical questions on Jewish law (*Teshuvot*). The distinction is similar to that between pure and applied mathematics in the realm of technology. But unlike modern scientific literature, the present tendency in rabbinical journals is to tip the scales overwhelmingly in favor of purely or mainly theoretical discourses. Of twenty-five articles in the latest issue of *Hadarom* (the Torah journal published by the Rabbinical Council of America), for instance, only two original contributions seek to supply specific rulings on practical issues (Rabbi J. J. Weinberg on whether a coffin temporarily used for one dead person may afterwards be used for another; and Rabbi S. Hibner on the earliest time in the evening for *Sefirat ha-Omer*). It may be surmised, parenthetically, that this unequal ratio between theoretical and practical rabbinics is related to the very small proportion of professional rabbis among the alumni of rabbinical colleges nowadays. "Pure" talmudic research seems to prove far more attractive than "applied" work among rabbinical masters and students alike.

The all too scanty preoccupation with current halakhic problems in rabbinical periodicals does not, of course, exhaust the contemporary output of practical Halakhah. Far more important are the responsa collections now appearing in growing number (Rabbi Mosheh Feinstein's massive two-volume work *Igrot Mosheh* is an invaluable addition to this genre). But even these works again constitute only a small fraction of present-day rabbinical books. Our review, being limited to periodical literature, will therefore occupy itself with but a small part of the literary halakhic productions of our day.

Interestingly, articles of halakhic interest now also appear increasingly in non-rabbinical journals. These halakhic studies in scientific and even popular periodicals are generally of a more historical or analytical nature, as some of the samples included in the present review will indicate.

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Women Supervisors

In one of its all too few excursions into practical rabbinics, *Hapardes* in its October 1960 issue publishes an interesting responsum by Rabbi Moshe Feinstein, the Dean of American *Posekim* and one of the world's leading rabbinical scholars today. He was asked whether a *mashgiach* (supervisor) at a kosher food establishment may be succeeded by his widow who depends on the revenue from that appointment for her and her children's livelihood.

In his reply Rabbi Feinstein, with his uncommon erudition, marshals numerous sources from talmudic literature to show that an observant woman is certainly deemed trustworthy to assume such an assignment with complete confidence.

The only possible objection might be the ruling of Maimonides excluding women from communal appointments. This is based on the biblical qualification regarding the establisment of a monarchy: "Thou shalt surely set him king over thee, . . . one from among thy brethren . . . "(Deut. 17:15), which the Sages interpret "a king, but not a queen" (*Sifri*). Rabbi Feinstein, however, could find no talmudic support for the view of Maimonides that this restriction applies equally to any public office. In fact, other authorities (such as Tosafot and the *Sefer ha-Chinnukh*) seem to dispute such an extension of the law beyond the choice of a sovereign.

Nevertheless, in order to avoid any doubt or complication, Rabbi Feinstein suggests that the woman be employed by the rabbi who is ultimately responsible for the Kashruth and whose "worker" she would be.

The above opinion subsequently aroused a spirited debate between Rabbi Feinstein and Rabbi Meir Amsel, Editor of *Ha-Maor* (1960, nos. 9 and 10) on whether the ruling by Maimonides was an innovation and whether other early authorities in fact disputed it.

Adoption

Unlike many ancient legal systems, particularly Roman law, the classic sources of Jewish law did not provide specific legislation on the adoption of children. Thanks to the rigid moral standards of Jewish home life, the pronounced sense of family relations, and the highly developed social conscience for the welfare of orphans as a communal responsibility among Jews, the problem was evidently never acute enough to necessitate any formal enactments regulating the private care for homeless children. But with the more recent flood of orphans, created by the ravages of war, and especially of children born out of wedlock, combined with the apparent growing infertility rates in modern times, Jewish adoptions are now fairly common.

The many halakhic problems raised by this practice have therefore lately received much attention. Excellent rabbinical studies on adoption include several chapters (especially on the adoption of non-Jewish children and their conver-

sion) in Rabbi G. Felder's volume *Nachalat Tzevi* (New York: 5719) and three articles in the latest issue of *No'am* (vol. iv. Jerusalem, 5721). But being here concerned with periodical literature only, we will confine our present review to the illuminating series of four articles on the subject by Rabbi Mordecai Cohen which have just appeared in the popular religious Israeli weekly *Panim el Panim* (January 1-27, 1961) and also in *Sinai* (Dec. 1960-Jan. 1961). The reader may compare the following summary with the review of Rabbi S. Hibner's opinions reported in this column in the last issue of TRADITION by my distinguished colleague and predecessor in this department, Rabbi Hyman Tuchman.

The principal sources on which the attitude of the Halakhah to adoption is founded are:

1. The biblical references to the quasi-adoptions of Moses by Pharaoh's daughter (Ex. 2:10; 1 Chron. 4:18); of five sons by Mikhal, Saul's daughter (2 Sam. 21:8); of Obed by Naomi (Ruth 4:16, 17); and of Esther by Mordecai (Esth. 2:7).
2. The statement in the Talmud, on the basis of these precedents in the Bible: "Whoever raises an orphan in his home is credited by Scripture as if he had born him" (*Megillah* 13a; *Sanhedrin* 19b).
3. The ruling by Isserles in the *Shulchan Arukh* that a legal document featuring the name of an adopted person as the child of the adoptive father is valid (*Choshen Mishpat,* 42:15), though greater precision may be necessary in marriage and divorce deeds (*Even ha-Ezer,* 129:10).
4. The important responsa on problems of adoptions by Rabbi Moses Schreiber (*Chatam Sofer, Even ha-Ezer,* no. 76) and Rabbi Benzion Uziel (*Sha'arei Uziel,* part ii, no. 183).

The most fundamental conclusion to be drawn from these and many other sources is, as Rabbi Cohen emphasizes, that adoptions in the sense in which the Romans and most modern legal systems understand them do not exist in Jewish law at all. In Roman law it is the law which establishes the facts; hence the courts have the power to transfer the rights and duties of natural parents to others in their relations to adopted children, in the same way as the courts establish or grant marriages and divorces. In Jewish law, however, the facts determine the law; the courts merely supervise and regulate personal relations into which the parties have entered by their own action. Just as marriages and divorces are executed solely by the parties to them, with rabbis or religious courts acting only to insure that such acts are lawfully performed, legal adoptions in the Jewish view merely represent obligations which the parties involved have agreed to assume, implicitly or otherwise. Such obligations may also result in some privileges, as defined by the courts. But no court can create the full equivalent of

natural family relations or replace them.

Following these basic considerations we may briefly sum up the main rulings listed in Rabbi Cohen's article:—

Name: An adopted child may legally assume the name of the adoptive family and use it in legal documents. However, he obviously retains his native status as a Kohen, Levi, or Israel; therefore he should be called up to the Torah by the name of his natural father, unless the latter's identity is completely unknown, when the adoptive father's name may be used to avoid embarrassing the son. The same applies to his *ketubah*. But a *get* should designate either his natural father's name or none at all in addition to the adopted person's own name.

Circumcision and Redemption: Normally the duty to have a child circumcised rests upon the father or, in his absence, the *Bet Din*. In the case of an adopted Jewish boy, therefore, this duty is transferred to the adoptive father, acting on behalf of the *Bet Din*. He may also recite the usual blessing, preferably as *sandek*. If the boy is the firstborn to his natural mother, the adoptive father may perform the *Pidyon ha-Ben*, omitting the statutory blessing but reciting *Shehecheyanu*, since the latter benediction marks his personal joy at the event.

Honoring Parents: An adopted child owes the same respect to his new parents, albeit only rabbinically, as to his natural father and mother (his bonds with them, being created by nature, remain of course indissoluble, and he continues to owe them every honor in death as in life). Upon the death of his adoptive parents he may recite *Kaddish* for them, though natural children saying *Kaddish* enjoy precedence over him. But the mourning laws apply only following the death of natural relatives.

Testimony: Since adoptions can only establish relationships based on affections and legal commitments but not on consanguinity, an adopted child remains disqualified from giving evidence for his natural family, whilst he may act as a witness for his adoptive family, just as two brothers, even if they are estranged like Jacob and Esau, can never testify for each other, whereas the most intimate friends may do so.

Marriage: For the same reason an adopted person may enter into a marriage with a member of his adoptive family (based on the consensus of rabbinical opinion permitting marriages among step-children having no blood relations), but not with the forbidden degrees of his natural relatives.

Material Obligations: By virtue of their consent to adopt a child, the new parents assume the same responsibilities to their charge as they would to a natural child, obligating them to provide for his sustenance, medical needs,

and his religious and vocational training. By the same token, adoptive parents, if they have fallen on hard times, are entitled to support from the child they have adopted, if he can afford it, as a prior claim on his charity.

Inheritance: Whilst an adopted child may claim a maintenance allowance from the estate of his deceased adoptive parents, he does not automatically inherit them unless they made a specific bequest for him in their will or so stipulated before their death. Provisions for such a bequest can legally be made part of the original adoption agreement, as is usually done in the court's adoption order. But such a legacy does not compromise the right of an adopted person and his natural next-of-kin to inherit each other.

Renunciation: An adoption constitutes a legal agreement which has the force of a solemn pledge, if not a formal vow. Accordingly, the adoptive parents cannot renounce their charge without the adoptee's consent, unless they show that they had assumed their obligation under duress. Also, an adoption cannot be annulled on the part of the adopted child except by agreement with his new parents and the court. But since adoptions are to serve primarily to promote the welfare of the child, his commitment is less binding than that of the parents. On reaching adulthood, or possibly even the age of sufficient understanding, therefore, he cannot legally be restrained from rejoining his natural family and from reassuming their name. As a human being endowed with an inalienable right to freedom, this option cannot be denied to him, though morally such an act may be regarded as an expression of gross ingratitude towards those who so liberally expended their love and their means on his upbringing.

On the strength of these regulations, concludes the author, the "Adoption Law" passed by the Israeli Parliament — while it may look unduly Western in its form and phrasing, a defect which should be corrected to give it a truly Jewish traditional appearance—is certainly in general harmony with the dictates of the Halakhah.

Gambling

A mainly historical study on a theme as topical today as it evidently was in ancient and medieval times is Jacob Bazak's "Gambling as a Mental Health Problem in the Halakhah" in the November 1960 issue of *Sinai*.

The article is introduced by a survey of the debilitating social and psychological effects of the addiction to gambling. As examples it cites some recent Israeli court cases of wife-beating and even murder resulting from inordinate gambling losses. To indicate that sometimes neither a brilliant intellect nor distinction and fame will assure immunity to this disease, reference is also made to the unique case of Leon de Modena, the celebrated 17th century rabbinical scholar of Venice, who — as he

himself admitted — was seized by "the spirit of folly and relapsed to card-playing" with heavy financial liabilities at the age of sixty years.

The article's concise review of the relevant halakhic sources shows impressively how severe are the strictures against gambling in Jewish law. Already the Mishnah includes "dice-players and people who bet on pigeon-races" among the social misfits disqualified from giving evidence at court. The reason given in the Talmud for thus depriving such offenders of their civil rights is, according to one opinion, the element of theft involved in the immoral gains by betting or, according to another, the gambler's failure to "occupy himself with the cultivation of the world," that is, to contribute constructively to the public welfare and not to be a parasitical member of society. While Maimonides still maintains the ban on accepting a gambler's testimony in its unconditional form, others—including Isserles in his authoritative glosses to the *Shulchan Arukh*—apply the ban only if the offender is a habitual gambler and pursues no other occupation for his livelihood.

Also discussed in halakhic writings is the question whether or not a person who has foresworn gambling may be absolved from his vow (if he finds he cannot honor it). Many authorities (including R. Meir of Rothenburg, Mordecai, Asheri, Adreth, and David ibn Zimra) hold that such a vow should under no circumstances be annulled since gambling in any event constitutes a grave transgression and the sanctity of the vow may help the irresolute to overcome temptation. But others (such as Isaac Barfat, R. Nissim, and Isserles) aver that those who cannot control their addiction should rather be released from their vow than compound the offense of gambling with the desecration of a sacred promise.

In medieval times the vice of wasting time and money on card-playing must have been fairly widespread, for the sanctions of the law had to be frequently reinforced by communal enactments against the practice. Such enactments, always of a local and temporary character, were passed by the Italian communities of Bologna and Forli early in the 15th century and of Cremona in the 16th century. Interestingly enough, all of them (not just one, as stated by the author) exempted sick people from the ban since their suffering might thereby be alleviated (see V. Kurrein, "Kartenspiel und Spielkarten im juedischen Schrifttume," in *Monatsschrift GWJ,* vol. lxvi [1922], a valuable contribution to the subject which the author failed to consult).

The nature of betting and card games is discussed in connection with the question whether they may be played on the Sabbath (even without money stakes). Joshua Boaz Baruch (*Shiltei Gibborim*) could see no objection to such games, provided they depended on skill rather than luck or chance. But another Italian scholar (cited in Isaac Lampronti's *Pachad Yitzchak*) refutes this

opinion as founded on inexperience in gambling. On this assumption, he argued, every game should be permitted on the Sabbath, since almost all games of hazard required some degree of skill. This view is shared by the author who rejects a similar distinction between games of skill and of chance in English law as altogether artificial and impracticable.

HASSIDISM AND THE HALAKHAH

Hassidism has often been misrepresented as the antithesis to Halakhic Judaism, as an almost "antinomian" revolt against the rule of "rabbinical legalism," particularly by the modern mystical school of neo-Hassidism popularized by Buber and Scholem. How false these pretensions are is convincingly demonstrated by Rabbi S. J. Zevin in his scholarly contribution "Great Leaders of Hassidism in the Halakhah," to the Israel Baal Shem Tov Bicentenary Memorial issue of *Sinai* (June-July 1960). The writer, as editor of the *Talmudic Encyclopedia* and author of numerous other halakhic works, is himself one of Hassidism's leading contemporary scholars, demolishing the fantastic charge against his movement in his own person. The article lists a great number of hassidic leaders — from the Baal Shem Tov himself to our times — who made outstanding contributions to the development and interpretation of rabbinic law as halakhists of the first order; men like R. Shneur Zalman of Ladi, author of the *Rav's Shulchan Arukh;* Rabbi Pinhas Horowitz, author of *Ha-Makneh* and *Hafla'ah* on the Talmud; R. Menahem Mendel of Lubavitch, who wrote voluminous responsa under the title *Tzemmach Tzeddek;* R. Isaac Meir, head of the Gerer dynasty, author of *Chidushei ha-Rim* on parts of the Talmud and the *Shulchan Arukh*; R. Chaim Halberstam of Zanz, author of the rabbinical responsa *Divrei Chayyim*; and R. Zvi Hirsch Schapiro of Munkacz, who has become immortal as the author of the halakhic compendium *Darkei Teshuvah* on the *Yoreh De'ah.*

Of more immediate relevance to this review, however, is another article in the same issue of *Sinai* written by J. Z. Kahana. Entitled "Halakhic Problems in the Wake of Hassidism," it deals with some questions of Jewish law raised by hassidic customs and conditions of life, as discussed in various rabbinical responsa. Here are some samples:

In reply to an enquiry, R. Chayyim Halberstam ruled that it was permitted, and even proper, for new followers of Hassidism to change from the Ashkenazi to the Sephardi rite of the "Ari" in their prayers.

R. Shelomoh Kluger denounced as "most corrupt" the sanction given by some rabbi to violate the Sabbath by writing a *Kvittel* (petition for health addressed to the *Rebbe*) and traveling outside the Sabbath limits to request the *Rebbe's* prayers for the sake of a dangerously sick patient. The Sabbath laws, he held, could be set aside in the face of danger to life only by essential medical acts performed "in the way of nature," not by su-

pernatural cures or prayers.

Another problem was created by the practice of Hassidim to visit their *Rebbe* for *Yom Tov*. Was it right for men thus to leave their homes and to ignore the injunction to "rejoice in thy festival, thou, and thy son and thy daughter . . ." in the company of their families? R. Simchah Bunam Schreiber of Pressburg replied in the affirmative, arguing that the talmudic dictum "a man is obliged to greet the presence of his master (teacher) on Festivals" was applicable to this case. In the opinion of another scholar (R. Simon Grunfeld), no one could legally be restrained from undertaking such a journey even if this would involve a threat to the *minyan* in one's home community. But morally it is proper to stay home in these circumstances, "particularly in this generation when many people visit their *Rebbe* during Festivals not for the sake of Heaven, but for reasons of dissension in their communities, for everyone wants to be the *baal Tokeia,* or the *makri,* or the occupant of the reader's desk . . ."

Asked whether a rabbi may leave his congregation to spend *Yom Tov* with his *Rebbe* and appoint a substitute in his place, R. Isaac Ittinga of Lemberg supported the congregation's council in their claim that the rabbi had no right to appoint a replacement; nevertheless, if their rabbi still left the congregation for a month, they were not entitled to remove him from his office on that account, as it was customary in many places for the local rabbi to visit the "sage of the generation" during the High Festivals.

A delicate question of rival jurisdictions between the local rabbinical head and hassidic elements in a community often arose from their special concern, already emphasized by the Baal Shem Tov, in the appointment of *shochetim* who, while satisfying the strict requirements of the Halakhah, might not pass the far more rigid tests of saintliness demanded by hassidic tradition. On the whole, the relevant responsa support the position of a community's official rabbi who alone had the right to appoint and dismiss a *shochet,* provided the rabbi's own learning and religious qualities were altogether unimpeachable.

Birth-Control

A disturbing example of the difficulties — and pitfalls — in dealing with complex and delicate halakhic problems on a purely popular level is furnished by Isaac Alon's article on "The Problem of Birth-Control in the Light of the Halakhah" in the December 16, 1960 issue of *Hadoar,* America's most respected Hebrew journal.

Although writing as "neither a rabbi nor the son of a rabbi," the author calls on the Torah sages of our day "to open their eyes and to recognize the situation as it is — namely, that God fearing and observant Jews perforce transgress a law explicitly stated in the Torah (by practicing birth-control) — and it is their duty to teach the Jewish people methods of birth-prevention which involve no immoral excesses" (sic!). The claim that the limitations of families to

two or three children is as common among the Orthodox as among the non-Orthodox is palpably refuted by statistical facts. One hardly has to visit the teeming tenements of Williamsburg to be convinced that the birth-rate among Jews bears an obvious relation to their religious orientation, thus governing incidentally the respective groups' prospects of survival and their relative numerical preponderance in the future.

The article sets forth fairly accurately some of the main biblical and talmudical sources on the subject. Starting with the positive duty to "be fruitful and multiply" as the first precept in the Torah, the author refers to the qualification in the Mishnah whereby this duty is incumbent only on men and not on women, and further to the accepted ruling that this duty is deemed fulfilled by the birth of a son and a daughter. After a man has thus performed the duty of propagation, argues the writer, the only two factors militating against preventing a continued increase of his family are (i) his obligation to pay the marital dues to his wife at regular intervals combined with (ii) the prohibition against wasting his seed. Yet the Talmud permits only three women to use contraceptive precautions — minors, and expectant and nursing mothers, and the author correctly summarizes the varied interpretations of this crucial passage by Rashi and the Tosafot to determine whether the sanction applies to these three women exclusively and whether such precautions may be employed before or only after intercourse by the wife.

Not altogether relevant—in view of the not quite identical halakhic considerations affecting birth-control and sterilization—is the writer's reference to the law permitting women to render themselves sterile by means of "the cup of sterility." This is a sterilizing agent evidently known to the ancients, somewhat similar to the oral contraceptive recently rediscovered in various hormone tests. But this law in no way warrants the author's conclusion that "the woman is allowed to use any means at her disposal to render the (husband's) seed ineffective."

Of the innumerable rabbinic writings on the subject the article mentions only two: one from the responsa (wrongly cited as *Pit'chei Teshuvah*) of the *Chatam Sofer,* in which he is allegedly inclined to question the wife's right to resort to "the cup of sterility" (actually the responsum permits such action, even without the husband's consent, if she fears great pain in renewed pregnancies); and the other by Rabbi Akiva Eger who sides with the more stringent opinions forbidding any contraceptive action (except if taken by the wife *after* intercourse in certain limited circumstances).

The very sketchy nature of the article, and above all its omission of any reference to the prolific modern literature on the subject, result in a wholly incomplete and partly distorted presentation of the Jewish view on this grave problem. The following are among the prin-

cipal considerations, vitally affecting the halakhic attitude, left out of account:

1. The talmudic insistence that the duty of procreation devolves on a man even after he has two children, based on the verse "In the morning sow thy seed, and in the evening withhold not thy hand."
2. The only valid indication for contraceptive practices considered in the responsa is a hazard to the life (and possibly health) of the mother.
3. The wife's non-surgical sterilization by a single act may halakhically be less objectionable than her continual recourse to contraceptives.
4. Chemical spermicides may be preferable to the use of physical impediments to prevent conception.
5. Above all, the problems involved are so intimately personal, sacred, and grave — affecting, as they do, capital issues of life and death — that each question should always be submitted to a competent rabbi for judgment on the basis of the individual merits of every case.

Israel's Corporate Responsibility

The Halakhah, as the authentic guide to Jewish life in all its phases, comprises not only rules on ritual observances or ethical conduct. It is equally concerned to *legislate* on the fundamentals of Jewish thought and philosophy. Among the subjects *codified as law*, particularly by Maimonides in his monumental *Mishneh Torah*, are the belief in God and His providence, the Jewish concepts of revelation and prophecy, and such doctrinal teachings as divine retribution and Messianism.

These areas continue to engage the attention of present-day halakhic authorities. A fine dissertation of this type appeared in the High Festivals 5721 issue of *Machanayim*, the splendid religious Israeli Army journal, under the heading "The Maxim 'All Israel are Responsible for One Another' in the Light of the Halakhah" by Rabbi Shelomo Goren, the Chief Rabbi of Israel's Armed Forces and one of the most prolific writers of our times on Halakhah and its history.

Rabbi Goren traces the origin of the concept of collective responsibility as reflected in halakhic literature to six biblical verses: —

1. "Thou shalt surely rebuke thy neighbor" (Lev. 19:17), a precept included among Judaism's "613 commandments."
2. "And they shall stumble every man upon his brother" (Lev. 26:37), which is rabbinically interpreted to mean: "one shall become a victim of another's sin, for all Israel are responsible for one another" (Rashi; based on *Sifra* and *Sanhedrin* 27b).
3. "The secret things belong unto the Lord; but the things that are revealed belong unto us and to our children . . . " (Deut. 29:28), i.e. after entering the Holy Land Jews became corporately liable for each other's failings in acts visible

to the public ("things that are revealed") as distinct from sinful thoughts known only to God ("secret things") (Rashi; based on *Sanhedrin* 43b).

4. "Cursed be he that upholdeth not the words of this law to do them" (Deut. 27:26), whereby the obligation is imposed upon everyone (who has the power and opportunity to do so) to insure that the law of the Torah is observed (*J. T. Sotah* 7:4).
5. "And the Lord said unto Moses: 'Take all the chiefs of the people and hang them up unto the Lord . . . " (Nu. 25:4). This command, following the people's "harlotry with the daughters of Moab," indicates that the leaders were held responsible for failing to stop the debauchery (*Bamidbar Rabba,* 20:23).
6. "And thou shalt not bear sin because of him" (Lev. 19:17) following the commandment to "rebuke thy neighbor" mentioned above. This means, according to some exegetes, that "you shall bear the guilt when your neighbor sins and you did not reprove him" (Nachmanides; *Raya Mehemna; Yalkut* no. 613).

Various differences of practical law result from the choice of one or another of these Scriptural teachings as the main source for the doctrine of collective culpability. For instance, Maimonides—basing the law simply on "Thou shalt surely rebuke thy neighbor" —rules: "He who sees his fellowman sinning or walking in an unrighteous path is commanded to lead him back to the right way and to inform him that he brings sin upon himself by his evil deeds . . . Thus one is obliged constantly to reprove him until the sinner strikes one and tells one 'I will not listen.' And whoever has the possibility to prevent (another's sin) and does not prevent (it) is held liable for that sin" (*Hil. De'ot* 6:7). R. Menachem Meiri, on the other hand, imposes such responsibility chiefly on the people's leaders: "The judges of Israel, their sages and guides are required constantly to investigate and to examine the deeds of their fellow-citizens, and they do not acquit themselves by merely doing what is proper in regard to open acts coming to their attention, but they must enquire and probe into covert acts as far as they can; and all who are negligent in this are accountable for the sinner's hidden transgressions, since all Israel are made to be responsible for one another . . ." (on *Sanhedrin* 43b).

A particularly interesting point elaborated in the article is that the corporate responsibility principle applies not only to the collective sharing of guilt. It also establishes the rational basis for the provisions in Jewish law whereby one Jew can fulfill certain religious duties incumbent upon another. For example, regarding most statutory benedictions, a person — even if he had already discharged his own duty— may recite a blessing again in behalf of someone else who is thereby released from his obligation (*Rosh Hashanah* 29a). Similarly, a syna-

gogue reader causes his listeners to perform their duty as if they read the prayers themselves, because — as the Ritva (*a.l.*) explains — although the commandments are imposed on every individual, all Jews are responsible for one another, and they are all as a single body and (each) as a guarantor who pays the debt on his fellow."

Accordingly, reasons Rabbi Goren, "the collective responsibility which all Jews assumed for each other binds them together as one person, and his liability for his neighbor is not just an additional law imposed upon each individual Jew . . . , but it conditions the character of all precepts in the Torah, in that no person can discharge his duty by what he does on his own, but so long as others have not acted likewise, he has not carried out his obligation in respect of those very precepts (which he performed for himself). In that case he not only failed to fulfill the commandment of 'Thou shalt surely rebuke thy neighbor,' but he did not complete the performance of the precepts themselves which others were required to , but did not, carry out . . . , provided he could exert an influence on them but abstained from doing so . . . For every individual is only a member of a complete body which is the whole people . . . , following the Talmud's interpretation of the law 'Thou shalt not take revenge . . . against the children of thy people' (Lev. 19:18): 'If someone cuts meat, and his knife (slips and) cuts his hand, shall the injured hand then cut the second hand?' (*J. T. Nedarim,* 9:2)."

This valuable analysis thus shows that the collective responsibility concept, in its religious, social, and national ramifications, is as central in Judaism as it is unique among human civilizations.

THE EICHMANN CASE

> Say unto God: "How awe-inspiring is Thy work" (Psalms 66:3) — those killed kill their killers and those impaled impale their impalers! — *Esther Rabba,* end.

This quotation introduces an exhaustive legal study on "The Judgment of the Jew-Oppressor in the Halakhah" by R. Moshe Zevi Neriah published in the almanac *Shanah be'Shanah* (Jerusalem: 5721). This concise and well-documented article, written by one of Israel's outstanding halakhists of the younger generation, seeks to supply and analyze the halakhic answers to problems raised by the dramatic capture of the arch-Jew-baiter, his abduction from Argentina, and his forthcoming trial. It may serve as a model for the application of Jewish judicial principles and rulings, as propounded in rabbinic law, to modern legal and moral problems of great complexity.

One of the main concepts germane to our case is the biblical law of the "blood-redeemer" (Nu. 35:9 ff.; Deut. 19:1 ff.). This provides that the next-of-kin of a murder victim, while he is *neither obliged nor entitled* to strike down the offender *before* the trial, is not *culpable* if "in the heat of his heart" he does so avenge his rela-

tive's blood (*Makkot* 10a). Only when a manslaughterer, before or after his sentence to exile in a "city of refuge," deliberately escapes, is the "blood-redeemer" given the duty—or, according to the accepted tannaitic opinion, merely the right—to slay the killer (*ib.* 11b), because by his escape "he exposed himself to death" (Maimonides, *Hil. Rotze'ach* 5:10), or because his life is legally protected only within the limits of such cities (Rashi, on Nu. 35:27). Moreover, *after* a murderer's conviction by a court of law, his execution is to be carried out by the "blood-redeemer" (Maim., *op. cit.*, 1:2), as expressly stipulated in the Torah: ". . . and they shall deliver him into the hand of the redeemer of blood, that he may die" (Deut. 19:12). While Maimonides does not list this duty as a distinct commandment (but includes it as part of the general law on the execution of murderers), Nachmanides treats it as a separate precept whereby it is incumbent on the "blood-redeemer" to "seek out [the murderer], to pursue him and to avenge his crime, so as to bring him before a court and have him executed according to law, or to slay him if the court cannot prevail over him, and in the absence of an avenging relative the court shall appoint a person to pursue the murderer and to act as the avenger of the victim's blood" (*Sefer ha-Mitzvot,* additions to positive commandments, no. 13).

Accordingly, the concept of the "blood-redeemer" is to insure that no act of murder shall remain unpunished. This obligation thus devolves not only on the next-of-kin —whose "heart is hot" by nature —but also upon the public which must not stand by idly without bringing a murderer to justice.

The duty to redeem the innocent blood of murder by apprehending the killer and having him tried respects no national boundaries. The first murderer already pronounced his own sentence: "Whoever findeth me shall slay me" (Gen. 4:14). The deliberate killer forfeits his title to life and to the protection of society. Even the Temple is to offer no sanctuary: "And if a man come presumptuously upon his neighbor, to slay him with guile; from off Mine altar shalt thou take him, that he may die" (Ex. 21:14). On the contrary, the presence of a murderer within the confines of a country places an obligation upon that country—the obligation to try and to execute him. This duty is so severe that, if it is not carried out, the government of that land is itself guilty of a mortal offense. As Maimonides explains: ". . . therefore all the inhabitants of Shechem [see Gen. 34:25] were liable to death; for Shechem had been guilty of robbery, and they [his fellow-citizens] saw and knew it but did not try him" (*Hil. Melakhim* 9:14). Scripture itself confirms this: "And saviors shall come up on mount Zion to judge the mount of Esau" (Obad. 1:21).

Rabbi Nehriah adds: "The argument, in our case, that a country in which the murderer is found

is also entitled to judge him, and that through his removal from its borders its *title* is vitiated—this argument is refuted by the fact that that country ignored for years the presence of the murderer in its territory and the duty devolving on it to bring him to justice . . . ; and thereby this title lapses and is transferred to whoever first claims it."

Nor is there any justification in the principal defense submitted by the war-criminals, *viz.* their acting under orders from above. Even when the order to commit a crime is given by a king, one is obliged to rebel against it and not to carry it out (*Sanhedrin* 49a). A command to shed blood must be resisted even at the cost of one's own life. This is a universal rule (applicable not only to Jews who are enjoined to lay down their lives for the "Sanctification of the Divine Name"), since it is based, not on any biblical mandate, but simply on the logical reasoning: "How do you know that your blood is redder than his?" (*Pesachim* 25b), i.e. that your life is worth more protecting than that of your threatened victim. The plea of ignorance is equally inadmissible: "And similarly if he killed and he did not know that it was forbidden to kill, . . . he is executed, and this is not considered an unwitting offense, for he should have learned [the law] but did not learn" (Maimonides, *Hil. Melakhim* 10:1).

Again, the criminal in our case may argue that he merely ordered the killings without performing them himself and that he should therefore be freed from capital guilt by virtue of the usual rule "There is no deputy for an illegal act" (*Kiddushin* 42b), i.e. the responsibility for a crime cannot be shifted by the deputy to his employer. This rule, however, is not applicable to a Noachide who commissions a murder, for it is written: "He who sheds the blood of man *by man,* his blood shall be shed" (Gen. 9:6)—"*by man* [that means even] through a deputy" (*Ber. Rabba,* 34:19). Moreover, the rule is invalid if the person who commissions the crime may presume that his order will be carried out (responsa *TaSHBaTZ,* 1:156; *Choshen Mishpat,* 388:15, gloss). The case is then identical with the culpability of one who causes a fire by the hand of an idiot or a minor (*Teshuvot Maimuniyot,* end *Sefer Nezikin,* 14). There is no doubt that the opportunity to persecute Jews by official order was greeted with enthusiasm by those charged with the ghoulish task.

The responsibilities for issuing such instructions is all the greater if they are reinforced by government sanctions. Thus the Prophet Nathan branded King David as the killer of Uriah the Hittite (2 Sam. 12:9) although the King had not personally slain him, "because, being a king he would be defied by no one, and it is as if he did the killing; similarly when Saul ordered the slaughter of the men of Nob, the city of the priests, it is as if he killed them. For even though no one may execute a

king's order under such conditions . . . , not every person bewares of this . . . ; hence the punishment is on the king" (R. David Kimchi, *a.l.*). In such cases, therefore, he who gives the order and he who carries it out are alike guilty of murder.

Also pertinent here are the significant words of Maimonides: "While there may be offenses even more serious than bloodshed, none involve the destruction of civilized society as bloodshed does . . . , and whoever is guilty of this offense is a wicked man throughout, and all the precepts he fulfilled in his entire life cannot outweigh this crime or save him from judgment, as is written: 'A man that is laden with the blood of any person shall hasten his steps unto the pit; none will support him' (Prov. 28:17). You can learn this from Ahab the idolator, regarding whom it is written: 'There was none like unto Ahab' (1 Kings 21:25). Yet when his sins and his merits were arranged before the God of the Spirits, no sin was found sentencing him to destruction, and nothing whatever which could be weighed against it, except the blood of Naboth [he had shed], as is written: 'And there came forth the spirit, and stood before the Lord' (*ib.*, 21:21) — 'that is the spirit of Naboth [whom he had slain]' (*Sanhedrin* 102b) . . ., although this evil-doer did not kill him by his hand but merely caused his death" (*Hil. Rotze'ach* 4:9).

As for Jewish capital jurisdiction, normally restricted to the Sanhedrin and subject to so many judicial safeguards as practically to abolish the death penalty, Jewish law provides the state and the courts with special powers in exceptional circumstances. To quote Maimonides again: "And regarding all these murderers and their like who [for technical reasons] are not liable to execution, if a Jewish king desires to execute them by virtue of his royal power and in the public interest, he is free to do so; similarly if a court sees fit to execute them as an emergency measure, because of the exigency of the hour, it has the right to do as it deems proper" (*ib.*, 2:4). In the absence of a king, these rights are vested in the nation as such and may be exercised by any duly appointed judge (R. Abraham I. Kook, *Mishpat Kohen, p.* 337).

A further relevant consideration may be the law on pursuers and informers who can be put to death, as an act of self-defense, to protect the community from threatened or repeated dangers. This law operates in our time, too (*Choshen Mishpat* 388:10, 15). For to exact punishment from such criminals is not a matter of sheer vindictiveness, as R. Joseph Engel well put it: "It should be explained that a judicial execution, apart from the atonement [it confers upon the sinner], also serves to make sure that neither he nor others shall commit such a crime in the future (as they might if they saw that the crime went unpunished), in accordance with the warning [following the infliction of the due penalty]: 'And those

that remain shall hear, and fear, and shall henceforth commit no more such evil . . .' (Deut. 19:20) . . . , so that there is an element of *saving life* in the execution of a murderer, to prevent people from being killed" (*Gilyonei Hashas, Pesachim* 91b).

The article appropriately concludes with the quotation: "Whoever is merciful with the cruel will ultimately become cruel with the merciful" (*Yalkut Shemuel* 121). We might add the verses: "The righteous shall rejoice when he seeth the vengeance . . . And men shall say: 'Verily there is a reward for the righteous; verily there is a God that judgeth in the earth' " (Psalms 58:11, 12).