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REVIEW OF RECENT HALAKHIC PERIODICAL LITERATURE

The field of rabbinic literature today is as rich and varied as it ever was. It deals, as it has in the past, both with the decisive clarification of the halakhic approach to modern problems and with the elucidation of difficulties in talmudic and other halakhic texts. The problems of modern life which this literature treats encompass the entire fabric of Jewish existence in the world today—including its social, economic, and political aspects. As long as the Halakhah is treated as a vital force, it will animate Jewish life today precisely as it did in all periods in the past. It may be taken for granted that, as always, differences of opinion exist among modern rabbinic scholars with reference to the analysis of problems and the application of accepted principles of Jewish law.

The justice of rent-control laws from the halakhic point of view is the theme of an article by Rabbi Joseph E. Henkin in the halakhic journal *Ha-pardes*, in the issue of April, 1957. Rabbi Henkin points out that when "Jews do not have their own established courts and their own communal organizations and the government (of the state in which the Jews dwell) enacts laws in civil matters for the welfare of its citizens, laws which derive from the established practice of the land, then all its citizens are obligated to obey the laws of the government. And when a matter of this sort arises before Jewish judges, they must judge in accordance with the laws of the government. Especially is this so in a constitutional state where laws are enacted by representatives of the people, Jews included."

Rabbi Henkin concludes that the rent-control laws are halakhically binding and deserve special support because they are moral in intent, being directed against profiteers and those who would oppress the poor. "And even though, at times, it may seem an injustice against landlords who are themselves not wealthy (and presumably have need of the additional income from increased rents of which they are deprived by

the rent-control laws), that is how laws operate; they are sometimes not universally just (in application) and we must judge according to the principle of what is best for the majority. That the law discriminates between the dwellings of the poor and luxurious apartments does not detract from its validity, but rather strengthens it and enhances its equity. Also to be considered is the fact that the law may be modified from time to time."

But, the author notes, Jewish law maintains the principle that the law of the secular state is binding upon all *only* where it does not discriminate against any member of the state. And do not the rent-control laws favor the poor over the rich? He disposes of this argument by pointing out that this is so only in a case of discrimination "between one group and another (arising) out of evil intent . . . or where a tax is unjustly and wilfully levied upon one individual (and not upon others). But where the law exists to aid the poor, we certainly uphold it and it should be applied without hesitation."

The June 1957 issue of *Ha-pardes* contains the first half of an article by Rabbi L. Baron of Montreal, Canada, concerning the propriety of teaching the Torah and the Hebrew language to girls. All Jewish law derives from specific or implied teachings of the Torah. The Torah contains a commandment that the father teach his sons, but does not mention daughters, and the Talmud deals with the question of the permissibility of teaching Torah to daughters. The author concludes that a girl is under no obligation to study the Torah (which here includes the Pentateuch and all the corpus of law which derives therefrom), since this is an obligation which the Torah itself places only upon men. However, a girl is required to learn the laws of the Torah which have particular application to her own role in Jewish life. He comes to the further interesting conclusion that today no Jewish child, boy or girl, is required to study Hebrew, since Jewish texts may be and have been translated into all languages. And the obligation to study Hebrew is never an end in itself, but only a means to enable one to understand the sacred writings. Only in the days of the Rabbis of the Talmud, at the latest, were both boys and girls required to learn Hebrew, since the Torah was available at that time only in that language.

And yet, he continues, in the second half of his article in *Ha-pardes* of July 1957, even today Torah is nowhere learned from translation but only through study of the original text and therefore we are, as a practical necessity, required to teach Hebrew to boys to facilitate their acquisition of knowledge of Jewish law for "worthy is the study of the sacred tongue when it leads to the understanding of our sacred Law." By extension, the same may be said of teaching Hebrew and religious fundamentals to girls, although the author does not take this further step.

An interesting article by Rabbi Tibor Stern in the halakhic Journal of the Rabbinical Council of America, *Ha-darom*, in the issue of Nisan 5717, deals with the Fifth Amendment and the halakhic attitude towards its use as a refuge against self-incrimination. Rabbi Stern first establishes that the concepts regard-

ing the determination of facts and the truth or falsity of legal pleas, are completely different in Jewish law from their counterparts in non-Jewish law. "Guilt or innocence (in Jewish law) is not determined by testimony of the parties to the suit but is based on the biblical principle 'by two or three witnesses shall the case be established.' The defendant is therefore not examined at all. In Jewish law there is no difference between a confession made under duress and a confession freely given, because even the voluntary confession of a defendant does not serve, without substantiating witnesses, as proof to determine judgment or guilt in any way." And of course the testimony of witnesses is accepted absolutely even without the confession of a defendant. Consequently, it is obvious that an individual's guilty plea does not affect judicial procedure in any way.

If an individual confesses to a monetary obligation, however, such confession is accepted without corroborative testimony of witnesses. Confession to indebtedness is in an entirely different category from confession to criminal acts. For, the author notes, a confession by the defendant that he owes money does not result in any punishment. It merely clarifies his obligation to return the money, which already rightfully belongs to the plaintiff, and thus enables him to perform the biblical commandment which enjoins a person to pay his debts promptly. It is not, therefore, a matter involving the court, which is properly concerned with the meting out of punishments for crimes committed.

The author concludes that an individual is, halakhically, under no obligation to inform against himself. But if he is brought before the court, he is required to assist the court in establishing the truth. He arrives at this conclusion by differentiating between a confession to a transgression which has, in Jewish law, a specific penalty and confession to a transgression where the penalty is determined solely by the judges. In the former case, a person cannot inform against himself. In the latter, he is not required to inform against himself, but once the matter reaches the court of law, he must assist in establishing the facts even at the risk of self-incriminating confession. As an example of the latter, the author rather curiously cites the case of one who confessed to violating the Sabbath. Curious, because Jewish law provides a rather drastic and specific penalty for deliberate violation of the Sabbath, as specific certainly as the penalty for slaughtering a stolen sheep and selling its meat, which the author cites as an example of the first type of confession.

The conclusion of the article is rather confusing and unclear and it would be of value if Rabbi Stern, who displays a fine gift for close analytical reasoning and judicious use of numerous sources, were to rewrite this portion of his paper.

In the Nisan 5717 issue of *Ha-ma'yan*, a halakhic journal published in Israel, Rabbi A. S. Benjamin Sofer discusses a problem which had been referred to him. May a *Kohen* ride in an automobile along a road which runs between graves on both sides, when the graves are not marked off by fences from the road, so that it is impossible to be absolutely certain that the automobile does not approach within the permissible limit of 4 cubits

(about 8 feet) at any time? A *Kohen* of course is not permitted to defile himself by contact with or proximity to a corpse or a grave, save in certain specific cases.

From the Talmud (*Nazir* 55a), Rabbi Sofer shows that one may not enter a place of impurity, even if one is entirely enclosed within a vehicle, if the vehicle is such that its passenger can easily step out of it. To this he compares the modern automobile and concludes that, under the circumstances above mentioned, a *Kohen* is forbidden to drive between rows of graves where these are not marked off by fences at least 10 handbreaths high (about 3 1/3 feet).

The halakhic journal published in this country by the Religious Zionists of America, *Or Ha-mizrach*, contains in its issue of Elul 5717 two articles dealing with matters of great interest. In one, Rabbi Moshe Z. Neriah, an outstanding Israeli educator who recently visited the United States, discusses "The Sabbath and the Security of the State." He deals briefly with the principles which underlie Sabbath-law and the circumstances under which these laws may be violated. He emphasizes that there is no real conflict between observance, by the State, of the Sabbath and the security of the State. There are, he says, sufficient authoritative sources in Jewish law to solve all problems of the apparent need for violation of the Sabbath involved in the functioning of the modern State of Israel. However, he cautions, the religious authorities in Israel will be in no haste "to publicize practical suggestions for solutions to many problems which occupy an important place in the life of the State and its functioning. For all the suggested solutions would be based . . . on the specific condition that they be applied only to situations of vital urgency and that the acts permitted be performed in ways which will vary from the usual manner of performing them (in which case no prohibition exists). And this is the source of the difficulty, since the Law forbids making known the permissibility of performing such acts (which are ordinarily forbidden) to people who will accept the permission granted without respecting the accompanying conditions." "Even in our generation," he concludes, "Israel does not lack great legal authorities who can solve the new problems which exist in the State of Israel. The matter depends only upon the willingness of the community to accept the rule of the expounded law, not to deviate from it to the left or to the right, to perform and to heed, to keep the path of the Lord, and to become the people of the Lord—a kingdom of priests and a holy people." Stirring words which fit the stirring times in which Israel's re-creation has occurred.

The second article in this journal is the reprint of a judicial verdict handed down by a *Bet Din* (a religious court) in Israel in a case concerning "The Determination of the Paternity of the Child." The *Bet Din* had previously granted a *get* (religious divorce) to a certain woman B. from her husband C. Shortly afterwards, another man, A., appeared before the *Bet Din* and requested an official declaration that he, and not the former husband C., was the father of the youngest of B.'s children. The child was then some eight months old. The woman B. confirmed this claim and her

former husband declared that he accepted his wife's statement, although he had engaged in marital relations with her both shortly before and after her brief adulterous liaison which lasted three weeks. The woman stated that she felt that A. was the father of her child, but was unable to explain or prove the basis of her intuition. She also maintained that the child resembled A. and that the child's blood matched his. Her former husband, B., said that originally he had no doubts about the paternity of the child, accepting it as fully his own. However, shortly after the child's birth, his wife had told him that he was not its father and he accepted her statement. He also expressed his belief that the child resembled A. and stated his acceptance of the evidence of the blood test which showed that the child's blood matched that of A.

The court summarized its conclusions:

A. 1) A person who is not presumed as a father (i.e. one who is not married to the mother) is not believed if he attempts to cast a stigma of illegitimacy upon a child who is presumed the offspring of another.

2) A woman is not believed if she attempts to cast a stigma of illicit birth upon her child even when there are witnesses to her adultery, because most of her marital relations are with her husband.

3) We can have no doubt as to the paternity of one who is presumed to be the father, even though he himself argues that the child is not his, so long as his arguments are based only on unsubstantiated guesses and suppositions.

B. The child's facial resemblance or lack of resemblance is not a decisive factor in resolving the doubt in a case of paternity.

C. 1) According to the findings of medical science, at times the blood of the child is identical with the blood of its mother and not with that of its father. And therefore only in a case where the blood of the child matches neither the blood of the husband nor that of the mother, is it possible to establish that the child is not the husband's.

2) According to Jewish law, every halakhic matter which concerns the blood of the child is considered in relation to the child's mother and not to its father.

3) With regard to establishing the paternity of the child, we can not rely on the principles of the science (of blood groupings) because the science is developing from day to day.

In its decision, the *Bet Din* expressed its regret that the proofs of the blood test result were not brought before it despite its request that this be done. It could not therefore establish whether the child's blood did not in fact match that of both men, A. and C.. However, as noted above in C-2, this did not play an important role in the decision.

In consequence of the principles outlined, the court rejected the request of all the parties that A. be declared the father of the child.

Although it really has no place in a discussion of Halakhah, it may be instructive to cite an article by Rabbi Hershel Matt of Troy, N. Y. in the Fall, 1957 issue of *Conservative Judaism*. The article, "Kashrut in Conservative Judaism," sets itself

the task of clarifying the issue of Halakhah in general in Conservative thinking and specifically the Conservative "Halakhah" in its approach to Kashrut.

The article is characterized by an imprecision and fuzziness in its reasoning as well as by the usual appeal to contemporary standards of reason and propriety in resolving halakhic problems, without real reference to the objective standards of the Halakhah itself.

Rabbi Matt views "the almost unbelievable variations among Conservative rabbis and congregations in such areas of the Halakhah as marriage and divorce, order of service, Sabbath observance, funeral practices, etc." and concludes that these "almost unbelievable variations" are in reality reducible to "two basic approaches to Halakhah."

One approach "considers the whole traditional pattern as binding, in all detail." The other approach "considers the main outline of the pattern as binding, with a requirement for detail—one cannot live in outline—but with permission to fill in with one's own selection and creation of detail."

(This is tantamount to saying that every degree of variation from the norm of Jewish observance is merely a difference in detail even where the differences extend to the point of non-observance. Such an attitude towards difference vitiates all differences, however real, in life or in nature, by classifying all areas of distinctiveness as being merely matters of "detail." Therefore a person who does not observe Kashrut at all is different merely in degree from one who does observe.)

With specific reference to the dietary laws, the first approach is quite simple to understand and apply, says the author. "The Shulchan Arukh and the other codes provide the only proper guidance and give all the answers to all questions of the diet of holiness for the Jew."

The second approach, with its artistic freedom to fill in detail, raises problems. The outline of Halakhah would be served by accepting these essential requirements of Halakhah:

"1. That some creatures are inherently forbidden to be eaten.
2. That animals which are permitted must be properly slaughtered—with the blood, certain fat and the 'sinew of the thigh' removed.
3. That the meat of animals properly slaughtered must be kept separate from milk."

Beyond these "essentials" of Kashrut, each person will "fill in the outline with a personal patterning," which will differ from every other person's. But "all will share in accepting both the three fundamentals and a holy concern to spell them out in concrete detail." (It seems to be a common feature of non-halakhic apologetics to belabor the sacred intent of the one who renounces Halakhah in whole or in part. As though the intention invariably sanctified the act which itself profanes what is most sacred!)

The "personal patterning" will reveal itself in whether one will or will not use utensils that have previously contained non-kosher food; in the quantities of non-kosher ingredients which one will permit oneself (presumably a *little* ham may be permitted, as a flavoring, one supposes); in how strictly one re-

quires that meat be salted and soaked with one person following the traditional Halakhah and another "satisfied with the draining of the blood at the time of slaughtering"; and in how strictly one insists on the separation of milk and meat.

If this approach of "personal patterning" is accepted by Conservatives, Conservativism will become the one faith where one man's meat is almost literally another man's poison or its close equivalent. Some or many (depending on the statistical range of the "personal patterning") Conservative Jews will find themselves forbidden to eat in the homes of other equally devout Conservative Jews whose "personal patterning" of Kashrut is more permissive than their own. One can only pause in wonderment at the thought of the catastrophic confusion in all this bewildering variety of patterns, when confronted with the problem of the kitchen of the Conservative Temple. Which pattern is it to be? Perhaps a combination of all possible patterns? The prospect is a bemusing one.

The doctrine of "personal patterning" is rich with possibility. One sees it applied to the problem of the Sabbath. All Conservative Jews would be asked to accept the *concept* of a day of rest, but the permissive element would concern, among other features, the *particular day* which one would observe. The more traditional would rest on Saturday, the seventh day of the week. Another Conservative Jew might rest on Sunday, for a variety of reasons. Another on Friday, or on Monday, or Tuesday, or another day. The mind is staggered at the infinite variety of which this formula is capable. But we should not feel troubled. Is there not a "holy concern"... ?

Incidentally, the same issue of *Conservative Judaism* contains an article by an irate Conservative layman who demands that the "Conservative Rabbinate supervise Kashrut at least for its members." One cannot refrain from asking, "What pattern of Kashrut will these Rabbis supervise?" Can a Conservative Rabbi who does not believe in the halakhic requirements for, let us say, salting and soaking meat (perhaps he is personally satisfied with the draining of the blood at the time of slaughtering) be entrusted with the task of supervising a kosher butcher who usually performs this religious essential for the Jewish housewife? Halakhah, the old, non-permissive kind, forbids it.

But to return to the article, Conservative Jews who accept more lenient interpretations of Kashrut "do not seek the easiest way out. They are concerned to carry out the *mitzvah* of Kashrut in a manner that they can honestly defend, explain, and justify to others and to themselves—and in a manner that they can pass on to their children and their pupils . . . They seek to walk with *Kavanah* knowing that within the prescribed limits each man must follow his heart's direction as he walks."

Man again is to be made the measure of Divine Law. Man's whims and rationale of the moment are to determine from day to day how laws shall be observed. The Law is to be whatever men wish it to be at any particular moment. The heart's "Kavanah" is to become the excuse for every transgression, major or minor.

Perhaps each age must experience its own Karaite heresy and witness the self-justification of the heretics

by their repeated references to the loftiness of their motives. So our author talks of "Kavanah" and "holy concern" when presenting a patently Karaite thesis—making the literal words of Scripture the binding "outline," while relegating all non-explicit and rabbinic law to a secondary and voluntary level where "personal patterning" is permissible. But a Karaite Halakhah remains ultimately Karaite, dried up and without contact with the flowing waters of living Judaism.

Early Christianity too found the Law overly demanding. It too fulminated against the rigid Pharisaic interpretations and it too stressed *Kavanah*, the intent of the heart, to the exclusion of all else. Finally it abrogated entirely the Law which in the beginning it had only criticized.

Judaism cannot accept the narrow, dead-end street of no Halakhah at all as in Christianity, or a Halakhah which is purely personal as in Conservatism. These cannot be a high road for the Jewish journey to the Kingdom of Heaven.