

SURVEY OF RECENT HALAKHIC PERIODICAL LITERATURE

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OBJECTIVITY IN THE HALAKHIC PROCESS

In two previous introductions to this Department we discussed the dynamic processes in the contemporary methods of rabbinic law-making (Fall 1961) and Halakhah as an instrument for the expression of Jewish thought as reflected in the relationship between the letter and the spirit of the law in Judaism (Spring 1962). These discussions, together with other extensive quotations from this Department, have now formed the basis for a comparative study on "Subjectivity and the Halakhic Process."*

The author correctly notes that in the application of halakhic principles to contemporary issues the rabbis often arrive at conflicting verdicts; in one case cited, there are indeed "two authorities who reach different conclusions based on the same data." This fact is incontestable, as conveyed to readers of this Department in numerous examples.

What is more questionable, and may be challenged as a *non sequitur*, is the author's recourse to this fact as proof for the claim that "the Halakhic tradition does not have a simple, objective answer to a modern question. Subjectivity begins, but becomes more pronounced, as the scholar reaches for one or another related issue to determine his

decisions. The freedom within the law allows one teacher to find the law permissive and another to introduce a new factor which seems materially to reverse the direct precedents."

Some element of subjectivity, to be sure, is to be found in every human transmission or determination of religious truths. Our Sages recognized this element even in prophecy, the most direct and unadulterated form of communicating God's will to man, when they declared: "All the Prophets looked in a mirror which was not clear, whilst Moses looked in a clear mirror" (*Yevamot* 49b). Only Moses reflected the divine teachings revealed to him without blurring by the slightest personal nuance his presentation of these teachings, just as a clear mirror reflects an image with absolute fidelity, without a trace of the glass itself being visible in the image. To him alone God appeared immediately "face to face" without recourse to dreams or parables requiring interpretation—the opening for the subjective element. But the other prophets received, and often conveyed, their message through visions that lacked the untarnished objectivity of a perfect mirror; to some extent their own personality colored the transmission of the truth as they saw it (see Maimonides, *Hil. Yeso-*

* Eugene B. Borowitz, *Judaism*, Spring 1964, pp. 211 ff.

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dei ha-Torah, 7:6). Hence, while Moses usually introduced his revelations by "And the Lord spoke to Moses" in the third person, whereby he could see even himself in a purely objective manner, the other Prophets commonly declared "And the Lord spoke to *me*," in the first person, without excluding their personal self altogether. As the Talmud put it, "The same communication is revealed to many Prophets, yet no two Prophets prophesy in the identical style" (*Sanhedrin* 89a).

The same subjectivity informs, *a fortiori*, all rabbinic judgments and rulings. In fact, the Rabbis themselves emphasized the human element in their administration of the law when they interpreted the verse "[The Torah] is not in Heaven" (Deut. 30:12) to imply that their decision overrides even the absolute verdict of "a heavenly voice" once the Torah had been finally revealed at Sinai (*Bava Metzia* 59b), and when they branded as a false prophet anyone who averred that he could determine Halakhah through prophecy, i.e., through any means other than the instrumentality of the human intellect in applying the laws and principles of the Torah to the problems of the day (Maimonides, *ibid.*, 9:4). Halakhah can be adjudged only through wisdom, not through inspiration, and as such it is bound to be subjective to the degree that any one intellect—with its assumptions and conclusions—differs from any other.

But all this is a far cry indeed from any attempt to relate this subjectivity to rabbinical disputes and conflicting verdicts on particular problems. In terms of the norms of law established in the responsa, the conclusions reached—however divergent they may be at times—remain completely objective and absolute; "these and those are the words of the living God" (*Gittin* 6b) is the felicitous expression of the Talmud. The halakhic process itself provides for, and sanctions, this method of establishing objective rules "according to the law which they shall teach thee" (Deut. 17:11).*

Translated into practical terms, these concepts allow every duly qualified individual rabbi to use his own *knowledge* and *discernment* to reach a verdict; but they do not permit him to inject the dictates of his subjective *conscience*, his personal bias or whims, into his choice of precedents, arguments or conclusions. He must accept and interpret the sources *as he finds and sees them*, not as he would like them to appear. "A judge can only consider what his eyes behold" (*Sanhedrin* 6b), and he must not shut his eyes to one source or fact and open them to another to suit his subjective judgment. He must give due consideration to *all* the principles and precedents he discovers in his search for earlier rulings bearing on the problem to be resolved, and in case his researches reveal conflicting

* For an instructive discussion of this issue on similar lines, see Walter S. Wurzbarger's "The Oral Law and the Conservative Dilemma," *TRADITION*, Fall 1960, p. 86 and his "Meta-Halakhic Propositions" in *The Leo Jung Jubilee Volume*, pp. 216 ff.

opinions, his choice of one or another must be governed by the accepted rules of the Halakhah itself, not by any arbitrary preference. It is recognized that, as a human being, he is subject to various influences, and his judgments are necessarily colored by non-objective considerations; but this is altogether different from a conscious employment of such subjective elements imposed on what are otherwise considered to be the objective decisions of Halakhah.

The objectivity of this process may be seen, for example, in the ruling of Maimonides against taking up residence in Egypt (*Hil. Melakhim*, 5:7), although he himself "was compelled [to live there] . . . as physician to the Sultan and the royal court" (*RaDVaZ*, a.l.). Similarly, the first item to be discussed in the present review may furnish some evidence for such objectivity of judgment despite personal variations of approach and outlook.

The religious problem posed by autopsies in the service of medical training and research commands by now an impressive collection of responsa. Basically the position of Jewish law on this subject was already defined authoritatively two centuries ago by R. Yechezkel Landau, and his view is the foundation of virtually all subsequent rulings to the present day.* Yet several new rabbinic studies on this question appear every year. They marshal many new sources, introduce new arguments, consider new circumstances, and sometimes come to new conclu-

sions. But what accounts for any variations in these conclusions are precisely these new sources, arguments and circumstances, not the undoubted desire of every rabbi to see this perplexing problem satisfactorily resolved. Every author dealing with such an issue will assemble *all* the sources and precedents he can muster, relate them to the facts as he knows them, and then arrive at a decision by applying the objective rules of the halakhic process. If, as we shall see, therefore, some rabbis tend to a more permissive verdict than others, it is only because they have discovered factual or legal premises unknown to the others, not because they personally prefer one precedent or opinion to another in opposition to their more restrictive colleagues. To the extent that some found different sources and interpretations from others, their judgments are admittedly subjective; but in so far as they all conscientiously took into account whatever relevant material was known to them, the resultant verdicts are completely objective, for that is all the authentic Halakhah demands in determining its directives.

AUTOPSIES

New material, arguments and suggestions on the vexing problem of autopsies in the light of Jewish law feature in several of the papers presented at the Sixth Annual Congress on the Oral Law held in Jerusalem in July 1963 and now published in book form under the title *Torah she-*

* See Immanuel Jakobovits, "The Dissection of the Dead in Jewish Law, in *Tradition*, Fall 1958, pp. 77 ff.

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be'al Peh by the Mosad Harav Kook (ed. Yitzchak Raphael, Jerusalem 5724).

The most scholarly and extensive contribution, a slightly revised form of a paper previously published in *No'am* (vol. 6, p. 82 ff.), is by Rabbi Yitzchak Arieli. He marshals and discusses a vast array of sources under the following headings of prohibitions: The desecration of the body and the honor due to it, disgracing and disfiguring the dead; the infliction of suffering on body and soul; deriving a benefit from the dead; delaying or negating the duty of burial; and ignoring the laws of priestly defilement and mourning.

While R. Yechezkel Landau permitted post-mortem operations only if they might save the lives of patients *then at hand* (*Noda bi-Yehudah, Yoreh De'ah, 2:210*), Rabbi Arieli is prepared to extend this principle even to patients who are not locally at hand, but who—through modern means of communication—may benefit from the findings of autopsies elsewhere, provided the ailment concerned is widespread enough to warrant the assumption that some other sufferer *at the same time* may be cured through these findings (based on *Chazon Ish, Oholot, 22*). But in fact, adds the author, while the disease may be widespread, the likelihood of a cure being discovered as a result of any particular autopsy is very remote indeed. In these circumstances, therefore, one would not be justified in setting aside the ban on disfiguring the dead for the (almost hypothetical) sake of saving life, especially when there are now, on the contrary,

many patients who (however wrongly) refuse to enter hospitals and thus endanger their lives because they dread the prospect of autopsies if they were to die there. Equally restrictive is Rabbi Arieli's rejection of autopsies to establish the cause of death, since he regards the link between such operations and the saving of life once again too tenuous. But in the light of many sources he cites, he is inclined to permit autopsies on bodies of persons who gave their consent in their lifetime.

Of particular interest is the author's insistence that neither the family nor the state may claim any ownership of a body; in life as in death this remains "the property of God" (Maimonides, *Hil. Rotze'ach, 1:4*). On the contrary, it is the family, on whom the duty to inter the dead primarily rests, that has the right to object to an autopsy even against the wishes of the deceased.

After discussing these and several related items, Rabbi Arieli (who, incidentally, is a member of the Israeli Ministry of Health Commission on Autopsies) summarizes the following conclusions:

1. The body of a Jew is sacred.
2. The soul bound to the body suffers when the latter is disfigured.
3. A post-mortem operation is a disgrace to the dead and biblically forbidden.
4. The dead person does not come to rest until his body returns completely to the earth, and a double transgression is involved in leaving any part of it unburied.

5. The state of "*Aninut*" (prior to the onset of the laws of mourning) remains in force for relatives responsible for the burial until the entire body is interred.
6. A priestly relative may not defile himself for the dead body if any part of it is missing.
7. The dissection of a stillbirth is prohibited.
8. Dissection for medical studies is likewise forbidden.
9. Autopsies for the purpose of saving other lives are permitted, provided there is a reasonable prospect that existing patients may thereby be healed.
10. This does not include autopsies to establish the cause of death.
11. In case of hereditary diseases autopsies are permitted.
12. Many authorities sanction post-mortems if the subject freely consented in his lifetime.
13. Corneal transplants from the dead may be permitted, but the grafting of other organs requires further investigation.
14. The family, while not empowered to permit autopsies, may prevent them, a right conferred on others, too, in certain cases.

The second paper is by the present reviewer who was the special guest-lecturer at the Jerusalem Congress, and who has long worked in this area as chairman of the Committee on Autopsies under the auspices of the Federation of Jewish Philanthropies of New York.

He emphasizes that the problem was no longer a purely religious question or merely the concern of individuals; it had raised an 'Iron

Curtain" of bitterness and mutual recrimination between rabbis and physicians, as indeed the scientific community generally. Neither side fully appreciated the arguments and grave considerations of the other side.

Citing the principal rabbinic sources from the Talmud to the present day, the author finds a wide variety of opinions. Some authorities regard as inalienable the rights of the dead to undisturbed rest even in the face of danger to life (R. Jacob Ettlinger); others sanction the utilization of the dead in the service of the living, provided due reverence is displayed during and after the operation (Chief Rabbi Benzion Uziel). Some distinguish between Jews and non-Jews (*Chatam Sopher*; Chief Rabbi A. I. Kook); others do not (R. Jacob Emden; Rabbi J. B. Soloveitchik). Some permit a person to donate his body for medical research (Ettlinger), whilst others object (*MaHaRaM Shik*). But none of the sources entitle relatives to permit an autopsy, even if the law of burial is mainly designed to prevent "a disgrace" (*Sanhedrin* 46b) "to the relatives" (Rashi); for any denial of the proper respects to the dead involves a disgrace to society in general and not only to the family (RaMBaM, cited in *Keseph Mishneh*, Hil. Evel, 12:1).

The consensus of rabbinic opinion today will permit autopsies only on the basis of the famous responsum of the *Nodah bi-Yehudah*, viz., if they may be expected to help directly in saving the lives of other patients *at hand*. But in applying this ruling, the following new circum-

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stances must be taken into account:

1. With the speed of present-day communications such patients are in fact at hand all over the world, and the findings of an autopsy in one place may aid a sufferer in another immediately.
2. Without autopsies some of the worst scourges still afflicting mankind cannot be conquered. Indeed, any autopsy nowadays, when medical science is so advanced, is more likely to help in the saving of life than the case permitted by the *Nodah bi-Yehudah* under the relatively primitive conditions of two centuries ago.
3. Autopsies now bear a relationship to the saving of life not only in the hope they hold out for finding new cures for obscure diseases, but also in testing the effects and safety of new medications and in demonstrating errors of diagnosis and treatment.
4. On the other hand, the very frequency of autopsies increases the danger that they will become a sheer routine, without any regard for their urgency, and without proper safeguards for the respect due to the dead.
5. With some patients refusing to be admitted to hospitals for fear of autopsies, the consideration of the saving of life now also operates in reverse.

The whole problem therefore demanded a new appraisal on both sides. Physicians would have to appreciate that the halakhic position is not just a matter of simple ritual but touching on the dignity of man created in the divine image and on

the rights of the individual which could never be swept aside automatically even for the public weal; that man's body belongs neither to himself nor to his relatives, and certainly not to the doctors, but to God alone; that the hesitations of Jewish law are also designed to enhance the dedication of doctors, by implanting in them an infinite awe and respect for the human body as the noblest creation in the world; and that rabbis are bound to be concerned to remove the terror of death from patients and the hardship of additional grief from their relatives. Rabbis, again, must understand the need for autopsies for medical progress to bring hope to millions of lives otherwise doomed; recognize the changes in medicine since the days of the *Nodah bi-Yehudah*; and take into account the broader ramifications of the allegation that rabbis hinder the promotion of life and health.

The author concluded with these practical proposals:

1. While no general sanction can be given for the indiscriminate surrender of all bodies to post-mortem examinations, the area of the sanction should be broadened to include tests on new drugs and cases of reasonable suspicion that the diagnosis was mistaken; for autopsies under such conditions, too, may directly result in the saving of life.
2. In the place of the existing Israeli law requiring the signature of three physicians to authorize an autopsy, each hospital should establish a special board consisting of two (preferably religious)

- doctors and one rabbi who should unanimously approve of every post-mortem operation.
3. Any permission for an autopsy is to be given only on condition that operation is reduced to a minimum, carried out with the greatest dispatch, in the presence of a rabbi or religious supervisor if requested by the family, and performed with the utmost reverence and with the assurance that all parts of the body are returned for burial.
 4. Just as it is the duty of rabbis to urge relatives not to consent to an autopsy where the law does not justify it, they are religiously obliged to ensure that permission is granted in cases where human lives may thereby be saved, in the same way as the violation of the Sabbath laws in the face of danger to life is not merely optional but mandatory.
 5. But relatives must be warned that the precept to bury their dead has not been carried out unless all parts of the body have been interred, and that the laws of mourning cannot be observed until then. If they are of priestly descent, they should also be advised that they must not defile themselves for bodies subjected to autopsies.

In the third contribution to this symposium, Rabbi Tanchum Rubinstein analyzes much the same sources and reaches similar conclusions as the other two. But some additional points he makes are worth recording.

He does not consider it sufficient

simply to add a rabbi to the medical board charged with approving autopsies. This would only be a temporary and often arbitrary solution, subject to the decisive opinion of the doctors on whether a question of saving life arises. Instead he urges the need for religious scholars to become competent in medicine and anatomy, so that they themselves can determine each case on its own merits.

Interesting too is the paradox to which Rabbi Rubinstein draws attention: Today one has the impression as if the doctors and the secular public favor the dissection of the dead, and only the rabbis and the religious community are in opposition on account of the disgrace done to the dead. Formerly the tables were turned. For the law against violating the dead is based on the verse: "His body [i.e. of an executed criminal] shall not remain overnight upon the tree . . . ; for he that is hanged is a curse unto God (*killelat elohim*)" (Deut. 21:23), and a commentator explains: "When people see those hanged, they are accustomed to curse the judges" (RaSHBaM), evidently interpreting *killelat elohim* as in *elohim lo te-kallel*—"thou shalt not curse the judges" (Ex. 22:27). The fear *then* was that the public would take the religious authorities to task for disgracing the dead, whilst *now* the religious judges are accused of preventing indignities to the dead and the general public does not care about the fate of the deceased!

VISITING INFECTIOUS PATIENTS

"Does the religious obligation to visit the sick apply to patients with

infectious diseases" is a question discussed in a brief responsum by the late Rabbi Zvi Grodzinsky of Omaha, Nebraska, published in the Yeshivah students' magazine *Haneeman* (Tel Aviv, Nisan-Iyar 5724).

Dealing with the rights of a tenant, whose wife had contracted jaundice, to take up his tenancy against the objections of the landlord, R. Moses Isserles, affirming these rights, declared: "If the landlord's claim were accepted, all the laws on visiting the sick would be nullified, for we find nowhere that a distinction was made [in these laws] between infectious and non-infectious diseases . . ." (responso ReMA, 20).

This may explain the following story in the Talmud: "R. Chelbo was badly sick . . . and no one visited him. R. Kahana rebuked them (i.e., the scholars), saying: Did it not once happen that one of R. Akiba's disciples fell ill, and the Sages did not visit him? So R. Akiba himself came to visit him, and because (on his orders) they swept and sprinkled the ground before him (the patient), he recovered . . . , and R. Akiba went and taught: He who does not visit the sick is as if he shed blood" (*Nedarim* 39b). Evidently, the Sages did not visit the patient because they feared contracting his contagion (as suggested by the term "badly sick"; cf. *Berakhot* 22b, and Rashi, *Shabbat* 30a), whilst R. Akiba, by ordering the disinfection of the sick-room, saved the patient and thus justified his teaching.

But the author suggests that the ruling of Isserles applies only to an infection, such as jaundice, which

would not endanger the life of the visitor even if he caught it. But no one would be required to risk his life for the sake of fulfilling this precept, which is merely rabbinical, by calling on a patient suffering from a dangerous infection. One could then just plead for mercy on the patient's behalf, which is the principal object of the duty to visit the sick (RaMBan, cited in *Yoreh De'ah*, 335:4, gloss). On the other hand, R. Akiba's own conduct in visiting the contagious patient need not be taken as a rule for others, since only a sage of his caliber has the right to rely on a miracle conferring immunity in the face of danger to life from infection.

This may also be borne out by another passage in the Talmud. While several Sages cautioned against entering the tent, or sitting in the draft, or having contact with the flies, of a man afflicted with *ra'atan* (evidently an infectious skin-disease), R. Joshua ben Levi attached himself to such sufferers and studied Torah, explaining that the Torah not only bestows grace on those studying it but surely also protects them (*Ketuvot* 77b). Those Sages, then, did not rely on the protection granted by the precept of visiting the sick, since the rule "those going on a religious mission will not meet with evil" is inapplicable to cases where harm is common (*Pesachim* 8b). [For further rabbinic sources on visiting infectious patients, see the reviewer's *Jewish Medical Ethics*, 1962, p. 108.—I.J.]

Mezuzot IN BUNGALOWS

Do doors in bungalows rented for the summer require *Mezuzot*? This question was recently raised in a let-

ter published in *Ha-Maor* (February 1964). The law stipulates that in the Diaspora a rented house requires no *Mezuzah* for the first thirty days; only in the Land of Israel must a *Mezuzah* be affixed immediately, in order to maintain Jewish settlement in the Land (*Menachot* 44a; *Yoreh De'ah* 286:22), for the trouble of fixing a *Mezuzah* will deter the owner from vacating the house, or else encourage another Jewish tenant to take it over soon (Rashi). [Others give the interesting explanation that this distinction is to remind us that residence in the Diaspora is to be regarded as temporary until in excess of thirty days, while living in Israel is always considered permanent, since one fulfills every day the *Mitzvah* of settling in the Land (see *To'aphot Re'em* on *Sepher Yereim hashalem*, 400:30; and *Da'at Kohen*, 179; cited in *Talmudic Encyclopedia*, 2:226). —I.J.]

The question is, therefore, whether a summer bungalow is regarded as a temporary residence and thus exempt from *Mezuzah*, or as a proper home once one stays there more than thirty days. Some argue that the Talmud's stipulation of thirty days' grace applies only if the original intention is to occupy the house merely for thirty days; otherwise one is obliged to fix a *Mezuzah* immediately on moving there (*Chavat Da'at*, cited in *Sedei Chemed*, letter "M", 118). Accordingly bungalows would require *Mezuzot* at once. But most authorities hold that the exemption invariably applies for the first thirty days (except in Israel); hence bungalows should have *Mezuzot* fixed with a *Berakhah* after

thirty days' occupation. There is also a further opinion that, since bungalows are in the first place built only for temporary summer occupation, they should never require *Mezuzot*.

The correspondent's enquiry is resolved by Rabbi Solomon Schneider in a subsequent number (April 1964). He decides that a *Mezuzah* should be affixed after thirty days but without reciting a *Berakhah*, basing himself on an earlier ruling to this effect by Rabbi M. Perlmutter (*Tarshish Sho'am* 52; as endorsed in *Sedei Chemed*, loc. cit.) and many other sources.

Another correspondent in the same issue, however, regards the whole question as trivial compared with the problem of whether one may altogether dwell in such bungalows, since most of them are built by Jews in deliberate violation of the Sabbath laws!

AUTOMATIC ELEVATORS

Modern science has created many new problems for observant Jews, but it has also helped to solve some of them. Notable examples of such technological aids to Jewish observance are such electrical appliances as time-switches and dry shavers. To these may now be added the automatic elevator, first introduced at the Fifth Avenue Synagogue in New York City in 1959 as an expedient for obviating the need for doing any forbidden work on the Sabbath even through the agency of a non-Jew. Since then similar systems have been installed in several Jewish hotels in America and Israel, and such an installation is now also being planned for a large housing project in Williamsburg, so that religious families

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can occupy high floors there.

The operation of these elevators is best described by reproducing the notice displayed at the entrance to the elevator in the Fifth Avenue Synagogue:

"On Sabbaths and Festivals this elevator is automatically controlled to call at the first, third (synagogue) and balcony (women's gallery) floors at intervals of approximately 2½ minutes. The doors will open for 17 seconds at each floor.

"The mechanism is operated by a time-switch set in advance, and no manual work whatever is required on holy days."

This system has now received its first formal rabbinical approbation in a responsum contributed to *Ha-Darom* (Nisan 5724) by Rabbi Samuel Hubner. The questions he discusses at length are (1) whether operating the elevator on the Sabbath by pressing an electric button constitutes a biblical or a rabbinic offense, and (2) what category of forbidden work may be involved.

A Jew operating an elevator, or any other electric appliance, on the Sabbath would be liable on several counts. By closing the electric circuit to activate the machine, he would

1. create the availability of an object for use on a holy day ("no-lad"), which is a rabbinic offense (*Bet Yitzchak, Yoreh De'ah*, 2:31);
2. cause sparks which may either be disregarded as too ephemeral (Rabbi E. Henkin) or deemed a merely rabbinic prohibition (*Chazon Ish, Hil. Shabbat*, 50:9) similar to the ban on making a fire from stones (*Betza*, 4:7), though some regard this

as a biblical offense (*TaZ, Orach Chayim*, 502:1); incidentally the author mentions that sparking is almost eliminated by using D.C. instead of A.C. current;

3. heat the wires and other machine parts which Maimonides regards as a major prohibition if done to refine the metal (*Hil. Shabbat*, 12:1) or even for any other useful purpose (*Mishpetei Uziel*, additions, 1, regarding elevators), though others consider this result of turning the switch as too indirect to constitute a biblical offense (R. Zirrelsohn, *Lev Yehudah*, 17) or too unlike the conditions in the Tabernacle of old which define the basic Sabbath laws (*MaHaRSHaM*, 2:246); and
4. transgress the rabbinic interdict on "repairing a vessel" (*tikkun mana*), i.e. making it serviceable (*Chazon Ish, op. cit.*); but the author regards this as a view not shared by any other authority.

All these prohibitions, however, are inapplicable to an automatic elevator since its operation requires no human action on the Sabbath at all. Only two possible objections remain. These are also disposed of by Rabbi Hubner. One is that the current consumption increases in proportion to the weight lifted, making it wrong to use an elevator even without operating it (*Peri Sadeh*, 4:39). However, this argument is rejected because "there is no shred of a prohibition in the mere increase of the current" (*Yabi'a Omer*, no. 19). [Moreover, the increase is not caused directly by the passenger, as it would be, for in-

stance, by stepping on a running escalator.—*I.J.*] The second objection — that the use of an elevator should be forbidden as “a weekdaily activity” just as traveling in a streetcar is (*Bet Tzedek, Yoreh De'ah*, 2:31)— is also refuted on the grounds that elevator riding is neither done in public nor appearing to serve business ends.

THE SOLAR CYCLE IN THE JEWISH CALENDAR

The discrepancy between the traditional date for commencing the Prayer for Rain (*Tal Umatar*) and its true astronomical value is the subject of an interesting pamphlet by Rabbi Abraham Rapoport issued by the London Beth Din (No. 11; Nisan 5724).

[To understand the problem here discussed, it must be appreciated that the Jewish calendar, though based primarily on the phases of the moon, is also dependent on the solar cycle in two quite distinct respects: (1) The various festivals must occur at certain seasons fixed in the Torah (e.g. Passover in spring time); to secure this, and to align the Jewish lunar years (of 354 days on the average) with the solar years (of 365 days) governing the seasons, seven extra (leap) months are intercalated every nineteen years. (2) Two specific dates, viz. for *Tal Umatar* annually and for the “Blessing of the Sun” every 28 years, are related to the seasons; hence these dates are determined by the civil (solar) calendar, i.e. December 5 or 6, and April 8, respectively.

[Now, the calculations underlying these two references to the solar

cycle in the Jewish calendar are at variance from each other, and this variation goes back to a dispute about the length of each season between two talmudic sages. The great Babylonian scholar and astronomer of the third century, Mar Samuel, assumed the duration of the solar year to be exactly 365 days and six hours, giving each season 91 days and $7\frac{1}{2}$ hours (*Eruvin* 56a). But five generations later R. Adda bar Ahava arrived at the much more precise figure of 365 days, 5 hours, 997 parts (1 hour has 1080 parts) and 48 moments (1 part has 76 moments) for the year, or 91 days, 7 hours, 519 parts and 31 moments for the season (Maimonides, *Hil. Kiddush ha-Chodesh*, 10:1).

[By a strange inconsistency, while R. Adda's calculation has been accepted to determine the length of the average year in the Jewish calendar, and thus the incidence of the festivals (no. 1 above), Samuel's rather rough figure is being used to this day for fixing the dates of *Tal Umatar* and the “Blessing of the Sun” (no. 2 above.)

[Incidentally, R. Adda's figure, though far more accurate than Samuel's which is identical with the year ($365\frac{1}{4}$ days) in the Julian calendar, corresponds somewhat less to the true astronomical value than the Gregorian calendar introduced in 1582. The deviation of the latter is only one day in 3,600 years, while the present Jewish calendar, based on R. Adda's figure, loses about $4\frac{1}{2}$ days every thousand years, so that we now celebrate Passover about 8 days later than in 344 C.E. when Hillel II introduced the fixed calen-

dar. The exact figures are 365 days, 5 hours, 55 minutes and 25.438 seconds for the traditional year, against 365 days, 5 hours, 48 minutes and 46.069 seconds for the astronomical year. On the other hand, the calculation of the Jewish month (i.e. from one *Molad* to the next) is much more precise; it exceeds the true value by less than half a second (29 days, 12 hours, 44 minutes and 2.841 seconds), so that we still follow the phases of the moon quite accurately to this day. — I.J.]

The main burden of Rabbi Rapoport's responsum is to show, on the basis of numerous sources, why Samuel's calculation, though less accurate, was adopted in preference to R. Adda's in fixing the date for commencing *Tal Umatar* in the Diaspora, and how this calculation operates in relation to our civil calendar. The problem, by the way, already perplexed R. Moses Schreiber (*Chatam Sopher, Orach Chayim*, no. 56) and others.

The ruling that "in the Diaspora (one commences praying for rain) sixty days after the start of the fall season" is originally found in the Talmud (*Ta'anit* 10a). It is assumed that "the Diaspora" in the context refers to Babylonia where rain before that time would in fact cause damage; "but in Germany, where the sowing period is from the middle of Tishri onwards . . . and the seeds may be damaged if rain does not descend immediately, why should we not act like the inhabitants of the Land of Israel who pray for rain as from Marcheshvan . . .?" (ROSH, *responsa*, 4:10; cf. ROSH, *Ta'anit*, 1:4). Surely, it is argued,

the rule to follow the practice of the Babylonians in the Diaspora can apply only to social and religious laws, not to matters depending on local requirements (*ib.*). This reasoning, suggests the author, implies that the original enactment to pray for rain was concerned merely to require that such a prayer be recited, leaving the times to be determined by local conditions. But other authorities (whose ruling we follow) maintain that the Sages specifically fixed only two dates for commencing the prayer, one for the Land of Israel and another for Babylonia and the Diaspora, without providing for a third alternative, except for any private prayer which may be inserted in the blessing of *Shome'a Tefillah* (RITVA, on *Ta'anit* 10a). These authorities hold, in the author's view, that the talmudic enactment prescribed not only the prayer but the period at which it is to be recited in all communities alike.

According to this view, therefore, the enactment is mainly of a symbolic character, unrelated to the variations of climate and agricultural needs in particular localities. This would then account for the choice of Samuel's calculation as the simplest expedient for universal adoption in liturgical usage. It enables every Jew throughout the world to know the date for commencing *Tal Umatar* without any complicated computations, such as would be required by R. Adda's calculation. However, considerations of simplicity do not apply to the determination of the Jewish calendar; this is in any event subject to complex factors and in principle the responsibility of the

Beth Din, so that R. Adda's more accurate system could here be adopted without confusing the individual Jew.

Once we assume, then, that the public prayer for rain is a mainly symbolic token in which all Jews are to join together at only two alternative times (for those inside and outside the Holy Land), it follows that even those living in the Southern hemisphere, where the seasons are reversed, should unite with their fellow-Jews elsewhere in the prayer for rain. Rabbi Rapoport in fact cites rulings to this effect by R. Isaac Elhanan Spector of Kovno given to a questioner from Australia in 1893 and confirmed by R. Samuel Salant of Jerusalem, although some decisions given by the London Rabbinate and others to settlers in Brazil as much as three hundred years earlier had counseled the omission of the prayer altogether on the grounds that rain in such places might cause damage and even disease (Abraham Hirschowitz, *Bet Avraham*, Jerusalem, 1923; summarized in *She'arim ha-metzuyanim ba-Halakhah*, 19:3).

Finally Rabbi Rapoport explains the dependence of the dates for *Tal Umatar* and the "Blessing of the Sun" on our civil calendar. These dates, as noted, are tied to Samuel's reckoning of the seasons which corresponds with the count of time in the Julian Calendar (and shares the astronomical inaccuracy with it). According to that Calendar, the *Te-*

kuphah of Tishri (beginning of the fall season) always occurs "seven days before October" (Avudraham, *Shacharit shel Chol*; quoted in *Bet Yoseph, Orach Chayim*, 117), that is, on September 24, so that *Tal Umatar* commences sixty days later, i.e. on the night preceding November 22, except in leap years when the *Tekuphah* falls at night and is thus counted from the following day, i.e. September 25, postponing the date for starting *Tal Umatar* to November 23. These fixtures were not changed when Pope Gregory XIII introduced his reform and dropped eleven days from the calendar in 1582, declaring October 5 of that year as October 15, and after which every century year not divisible by four was no longer counted as a leap year. Hence, in every such century the date for *Tal Umatar* is removed by one more day (in addition to the eleven omitted in 1582) from the Gregorian reckoning. By 1900 the discrepancy thus amounted to 14 days, so that during the present century *Tal Umatar* is begun on December 5 or 6 (corresponding to November 22 or 23 in the Julian Calendar). These dates will remain until 2100 when the omission of another leap year will change them to December 6 or 7. In sum, the Jews are about the only community (along with some Eastern Churches, *lehavdil*) to have retained a feature of the Julian Calendar to the present day!