

# SURVEY OF RECENT HALAKHIC PERIODICAL LITERATURE

Immanuel Jakobovits

## RABBIS AND DEANS — Part 2

Emboldened by the encouraging response from many readers to our observations under this heading in our last issue, we venture now to expand on this theme and to offer some constructive solutions to the problems posed. The principal criticisms leveled at the existing tendencies in the preceding review may be summarized by the following five points:

1. The denigration and usurpation of the role of practicing rabbis by *yeshivah* deans had virtually eliminated the traditional place and functions of the rabbinate in the spiritual government of the religious community, resulting in the disappearance of the public Torah image in the community at large.
2. The transfer of rabbinic jurisdiction from communal rabbis to academic scholars confined to *yeshivot* had severely limited the scope of contemporary Halakhah and caused substantial deviations from the traditional pattern in the methods used to determine Jewish law.
3. These unprecedented developments had led to the displacement by *yeshivot* of *kehillot* as the institutional center of gravity in Jewish religious life.
4. The *yeshivot's* discouragement of rabbinical careers was directly responsible for the spread of mediocrity in the rabbinate and the

growing scarcity of candidates for leading rabbinical positions.

5. *Yeshivot*, by tending to stifle rather than to promote a sense of commitment to the wider community, had been equally unsuccessful in raising a community-minded laity, so that public Jewish life became increasingly drained of rabbinical and lay leaders alike.

To reverse these baneful trends will require much courage and vision. But the foremost requisite is a willingness by all concerned to engage in a dispassionate debate to tolerate genuine criticism and dissent, and to sweep away the cobwebs of conformity and stereotyped thinking to make room for honest search and bold correction. The following observations and suggestions on the above five points are offered in this spirit:

1. The answer to the first challenge is obviously the restoration of rabbinic authority. "Jephthah in his generation is [vested with as much authority] as Samuel in his generation, to teach you that even the most unworthy person, *once appointed as a leader over the community*, is like the mightiest of the mighty" (*Rosh Hashanah* 25). Rabbinical authority, our Sages averred, derives from *communal appointment*, not from mere wisdom or learning. As expressed forcefully in the incident on fix

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the date of *Yom Kippur* (*Rosh Hashanah*, 2:9), a Rabbi Joshua, however superior his scholarship, must submit to the rulings and decrees of a Rabbi Gamaliel as the practicing office-holder. There can be no substitute for, or challenge to, an official and legitimate incumbent of a rabbinical post.

A part of the problem may lie in the current use and abuse of the rabbinical title. *Semikhah* (rabbinical ordination) is traditionally the conferment of power and responsibility to *exercise* rabbinical jurisdiction, as emphasized in its wording *yoreh yoreh*—"he shall surely give rulings." It is the passport to an office, not some honorific title or degree. It is a charge to *practice* rabbinics, a "crown" of sovereignty that confers obligations as well as rights, as the wording of the document implies. It is definitely not just a certificate of academic proficiency. "Any scholar who has attained *hora'ah* (or *semikhah*) and does not exercise it withholds Torah and causes the public to stumble; regarding him it is written: 'A mighty host are all her slain' (Prov. 7:26)" (*Yoreh De'ah*, 242:14), just as a qualified physician who does not practice medicine is deemed guilty of bloodshed (*ib.*, 336:1).

*Semikhah* ought to be awarded only to candidates for the active rabbinate and not as a kind of higher yeshivah graduation diploma, and the *use* of the rabbinical title should be limited to practicing rabbis. It was never meant as an incentive to Talmudical studies. "A man should not say, I will study so that people will call me 'Rabbi' "

(*Nedarim* 62a). If any such incentives or rewards are really needed, let us reintroduce the time-honored titles of "*Morenu*" and "*He-chaver*" as a mark of distinction for scholarship and piety. Let outstanding masters be known by the affectionate "*Reb*" or the more eminent "*Hagaon*." Even many Talmudical savants were content to forego any rabbinical appellation, men like Hillel and Shammai, or Abaye, Rava and Samuel, amongst numerous others!

Businessmen, accountants, or insurance agents using the title of rabbi without exercising it can hardly contribute to the public respect for the rabbinate, especially in our confused society. Historically and halakhically, a rabbi is an administrator of Jewish law, a spiritual guide and a communal leader. *Yeshivot*, as the custodians of Torah education, should be the first to acknowledge the function of rabbis in this capacity, and not merely as expedient fund-raising agents, if the Torah image and authority are to be restored in Jewish life.

2. The effectiveness of rabbinical authority today largely depends on public endorsement. For the first time in our history Judaism must be vindicated in a democratic age. Gone are the days when any *ex cathedra* pronouncement or dogmatic ruling by a rabbi would automatically command popular respect by virtue of his learning or standing. In the administration of Jewish law, justice must not only be done, but be manifestly seen to be done; as far as is possible, the logic of halakhic decisions must be dem-

onstrated before the bar of public opinion to win acceptance. To translate this essential ideal into practice, three elements are required: (a) relevance, (b) sweet reasonableness, and (c) a measure of tolerance.

(a) *Halakhah* must be, and appear to be, a guide to human progress, not a brake on it. All too often rabbinic judgments deal with religious problems in the light of modern conditions, not with modern problems in the light of religious conditions. Vast segments of our people are alienated from Torah life because they believe that *Halakhah* creates problems instead of solving them. This is bound to result from the emphasis in rabbinic rulings on subjects of little relevance to the average modern Jew rather than on the great moral, social, and intellectual challenges troubling our age. To make Judaism meaningful and true to its primary purpose, halakhic guides must address themselves increasingly to defining the contribution of Jewish thought and teachings to such areas of current concern as birth-control, juvenile delinquency, the use of leisure, the economics of automation, Jewish-Christian relations, and the place of religion in public life. *Halakhah* cannot become a popular guide to life unless it embraces all life.

(b) In making halakhic decisions, the reasons given are as important as the conclusions. Even Moses was charged "to trouble himself in making everyone comprehend the reasons" for his teachings (Rashi, Ex. 21:1), and the *Shulchan Arukh* forbids rabbis to issue permissive

rulings "which astound the public" because they are unintelligible (*Yoreh De'ah*, 242:10). Today more than ever before, rabbis must interpret or explain as well as adjudicate the law if they are to enjoy the fealty of the public. They must serve both as priests "to teach God's judgments to Jacob and His Torah to Israel" (Deut. 33:10) and as heirs to the Prophets (*B. Batra* 12a) in presenting the moral and universal aspirations of Jewish existence.

(c) The third requisite, tolerance, is equally indispensable for the restoration of rabbinical authority. Differences of opinion are the dynamics of Jewish learning and practice. They have always fertilized the very soil of the Torah "tree of life." The cause of Torah Judaism is hindered rather than helped by the present tendency towards ever more rigid uniformity, turning stringency into a fetish and branding all dissent as heresy. The violent agitation against Rabbi Moshe Feinstein's ruling on artificial insemination and against the Manhattan *Eruv*, though both based on unimpeachable authorities, are cases in point drawn from recent experience in New York.

The absence of all these three desiderata is inherent in the exercise of rabbinical jurisdiction by yeshivah deans who are remote from the concerns of contemporary society, shielded from the pressures of public opinion, and conditioned by the unquestioning loyalty of their yeshivah students. Practicing rabbis, on the other hand, are necessarily exposed to the broader challenges of real life, required to

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win consent as well as obedience, and compelled to explore legitimate concessions or to tolerate dissent.

3. Rabbinical offices cannot be filled with incumbents, adequate in quality and in quantity, without training them. A *lamdan* (Talmudical scholar), however learned, is not necessarily a rabbi and may be a far cry from it. To meet the exacting and manifold tasks of rabbinic leadership, especially in our trying times, numerous skills are required in addition to scholarship. The spiritual leadership of a congregation calls for a high degree of proficiency in the presentation of Jewish thought, in the exploitation of public and personal relations for religious ends, in the impressive conduct of religious services and functions, in communal vision and diplomacy, in educational expertise, in some literary finesse, and above all in competently grappling with the intellectual challenges of our age. The exercise of purely rabbinical jurisdiction as a *moreh hora'ah* (an administrator of Halakhah), too, requires far more than mere competence in a few Talmudic tractates and some one hundred chapters of *Yoreh De'ah* dealing with ritual slaughter and *kashrut*, as presently constituting the *semikhah* program. To pass halakhic judgments a rabbi must be at home in all parts of the *Shulchan Arukh*, especially the *Orach Chayyim* and *Even Ha-Ezer*, familiar with the responsa literature and its methods, and proficient in the *shikkul ha-da'at* (weighing of opinions) indispensable for all rabbinic rulings. These skills can be acquired only by years of training and ex-

perience (*shimmush*), and through the constant consultation of writings and masters reflecting this experience.

The requirements for rabbinic ordination, therefore, should be amended to include this training, both in theory and in practice. To authorize rabbis to practice rabbinics and to guide congregations by virtue of their Talmudic learning only is as irresponsible as to qualify physicians to treat patients and to administer hospitals merely on the basis of some academic studies in the principles of medical science and without any clinical or hospital experience. *Yeshivot* devoted to theoretical studies in Talmud and parts of *Yoreh De'ah* can no more turn out competent rabbis without the help of rabbinical seminaries than medical schools and textbooks can produce qualified doctors without hospitals.

The rabbinate today demands highly specialized professional skills to be an effective agency of spiritual leadership and halakhic jurisdiction. To ensure an adequate supply of high calibre rabbis professional schools are no less essential than for the training of any other professionals. The *yeshivot* can continue to ignore this need only at the cost of letting countless more spiritual "patients" die for lack of competent healers. The appalling toll of defections from Judaism, of religious casualties, will hardly abate unless rabbinical functions are restored to rabbis equipped to respond to the questions and questionings of our times—men able not only "to learn and to teach" but also "to guard and to act."

4. *Yeshivot* are meant to make Jews, *kehillot* (congregations) to preserve them; the former prepare for Jewish life, the latter act it out. When Moses communicated the main principles of Jewish living to the Children of Israel, he assembled them in "congregations," not in *yeshivot* (Ex. 35:1; Lev. 19:2, and Rashi). For countless centuries congregations led by rabbis have always been the backbone of organized Jewish life. Under their umbrella all other facets of communal activity grew up and operated: education, rabbinical courts (*batei din*), *mikvaot* and welfare services. Today, with the disappearance of *kehillot* as the principal bulwark of Jewish life and their replacement by *yeshivot*, many of these communal amenities are largely either non-existent (such as communal *batei din*), or in unreliable private hands (such as *kashrut* and *shechitah*), or under non-religious control (such as the social services of the federations, etc.), and the religious community is fragmented and impotent in guiding the destinies of our people.

This situation will not be ameliorated until the *yeshivot* orientate their students towards a sense of communal responsibility, as expressed, in the first instance, by active membership in established congregations. So long as our most valuable human resources are absorbed and nullified by communally ineffective *shtibels*, which neither demand nor offer any contributions to the wider community, the most vital potential for building up the organism of Jewish religious life is frittered away, and the congrega-

tions that do exist are religiously emaciated for want of members who are intensely committed and exemplary in their learning and conduct. The allegedly low standards of observance and religious fervor in larger synagogues are no excuse for defying Hillel's maxim, "Do not separate yourself from the congregation" and for surrendering our public institutions to the rule of ignorance and apathy. On the contrary, "where there are no men, you endeavor to be the man!" The decline of our congregations calls for mobilizing the support of our *yeshivot*, not for their withdrawal and indifference. The dearth of Torah-committed members in our major Orthodox synagogues does not excuse the *yeshivot* — it indicts them.

5. The Torah tradition, as "a tree of life to them that strengthen it," has always given equal recognition to the scholar and to the supporter of scholarship, to Issachar and to Zevulun who shared the rewards and the responsibilities for Jewish learning in identical parts. Hence, it was considered no less important to raise Zevuluns, dedicated to the support of Torah learning and living, than to produce Issachars, devoted to the mastery of Torah studies.

Today this essential balance in Jewish life is being dangerously upset. The *yeshivot*, by their monolithic program aiming at the accomplished *lamdan* as their sole ideal, seek to fulfill one requirement whilst ignoring the other. As the main custodians of public Jewish education, *yeshivot* will have to be more diversified in their cur-

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riculum and objectives to meet all our needs. The graduation of a potential Zevulun—a successful and devout businessman or professional—should be as urgent and precious a task as raising a profoundly learned Issachar.

To this end, *yeshivot* (at least the larger ones) should have a dual program of Jewish studies: one, stressing intensive learning designed to train competent scholars, rabbis and teachers, and the other, with an academically more limited scope, aimed at producing dedicated and knowledgeable *ba'alei batim*, distinguished by their piety and public-spiritedness rather than their scholarship. These latter products will eventually swell the ranks of an enlightened and loyal laity from which our lay leaders and Torah supporters are recruited.

Not every *yeshivah* student is fit or willing to be fashioned into a *lamdan*. By focusing the entire educational system on the few who are intellectually and otherwise endowed for Talmudic excellence, the *yeshivot* neglect all others and they are often lost to traditional Judaism later in life. With proper modifications in *yeshivah* policies, aims and methods, this large group could be turned into an element no less vital for the preservation of the Torah community than the most erudite scholars. It is to this group of deeply committed "plebeians," at present completely ignored in the *yeshivah* "world," that we must look for providing our scholars with followers and financial support and for replenishing the thinning ranks of our lay leaders and communal workers. Without Zevuluns, Issa-

chars will eventually disappear, too, and it is up to the institutions of Jewish education to raise the former as well as the latter if creative Jewish living is to be perpetuated, and if the Jewish people is to recover its national purpose as a religious community.

### REFORM MARRIAGES

As a rule, the responsa reviewed in this Department are restricted to those published in current periodical literature. We make an exception on this occasion by including some abstracts from a book of responsa, both as a tribute to one of the most prolific and widely respected Halakhists recently deceased and because of the intrinsic value and topical importance of the subjects discussed. They appear in the third volume of Rabbi Yechiel Weinberg's masterly *Seridei Esh* just published by the Mosad Harav Kook in Jerusalem.

A delicate question lately subjected to much popular and mischievous agitation concerns the religious validity of marriage ceremonies performed by non-Orthodox rabbis, i.e. by officiants who do not themselves subscribe to the unqualified authority of Jewish law. One may wonder, parenthetically, why those who protest their freedom from the restraints of the Halakhah to vindicate their dissent from traditional Judaism are so concerned to have their religious actions sanctioned by those loyal to the traditional "law of Moses and Israel."

Rabbi Weinberg deals with this matter in two responsa (nos. 18 and 19); the first written when he

was still Rector of the *Rabbiner Seminar* in Berlin. A man had been married by a Reform rabbi and subsequently wanted a traditional *Ketuvah* issued by an Orthodox rabbi, who enquired whether he could accept the marriage as valid and thus save the only daughter born to the couple from any stigma. In his reply, Rabbi Weinberg refers to a case discussed in the *Chatam Sopher* (no. 100) in which a marriage performed by a rabbi, also serving as a witness together with a *shamash* who was later found disqualified as a relative, was ruled valid in principle, since it could be assumed that other acceptable witnesses were present. On a similar assumption the Reform marriage, too, may strictly be in order. Nevertheless, to avoid all doubts, the responsum in the *Chatam Sopher* urged the private performance of a second ceremony in the presence of two qualified witnesses. Accordingly, Rabbi Weinberg likewise advises his colleague to solemnize the marriage again, explaining, if necessary, that this was required for the writing of the *Ketuvah*, since it was not properly executed at the first marriage. But on no account should the husband be told that the original marriage was invalid, "so as not to arouse any evil talk about the [Reform] rabbi and to prevent the husband and his wife from looking upon themselves as having theretofore lived together illegitimately."

The other responsum, addressed to Rabbi S. R. Weiss of the Union of Orthodox Jewish Congregations of America six years ago, considers as valid, subject to Rabbi Moshe

Feinstein's endorsement, marriages performed by a rabbi together with a *shamash* (acting as the second witness) who was later found not to be a Sabbath observer. Rabbi Weinberg bases his ruling on the following considerations:

1. In the *Chatam Sopher* (cited above) it is assumed that even if (disqualified) witnesses had been assigned, the marriage is validated by the presence of other (qualified) witnesses notwithstanding the failure to specify them as such, since the groom and bride obviously want the ceremony to be legal.
2. Generally, witnesses cannot be disqualified except by evidence before a court (see *Choshen Mishpat*, 34:25). This may apply even when a witness is aware of his own disqualification (*Pitchei Teshuvah*, a.l., 1, citing *Chavat Yair*).
3. According to R. Jacob Ettlinger (*Binyan Zion*, no. 25), Sabbath desecrators nowadays are not automatically disqualified from giving evidence (since their action is no longer an act of defiance or heresy, as it was in former times, when Jews lived almost exclusively in a Sabbath-observing society).
4. The disqualification of non-observant witnesses may extend only to evidence relating to laws they do not observe (R. Aaron Walkin, responsa *Zekan Aharon*, part 1, no. 81, citing *Shiltei Giborim*, *Sanhedrin*, 3). Violators of the Sabbath, however, may be presumed not to violate marital laws, so that their evidence in matters of marriage should be acceptable.

Hence, Rabbi Weinberg advises against informing couples married under such conditions that their

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marriages are religiously defective, for this would only lead to a *Chilul ha-Shem* by holding up the solemnization of marriages to scorn and the couples so married to disrepute.

[Neither of these two responses is, of course, conclusively applicable to marriages performed by Reform rabbis who openly flout some fundamental Jewish marriage laws (e.g., by remarrying parties without a religious divorce) and whose ceremonies are not always witnessed by any religiously qualified witnesses.—I.J.]

### ARTIFICIAL INSEMINATION

One of the gravest and most complex moral problems raised by the advance of modern medicine engages Rabbi Weinberg's attention in a responsum (no. 5) distinguished by the conciseness of its presentation and the clarity of its conclusions on a subject beset by numerous highly technical considerations. The author refers only briefly, and from memory, to some of the principal rabbinic writings on this problem,\* and he urges his questioner to consult these carefully before applying his own ruling in practice.

Although artificial insemination is a fairly recent innovation [the first "test-tube baby" was only born exactly one hundred years ago in the United States], the principles involved were known to, and discussed by, the masters of Jewish law very long ago. In fact, the Talmud—alone in the entire litera-

ture of antiquity—anticipated the feasibility of a conception without any physical contact between the parents some seventeen centuries before medical science recognized this. The reference is an affirmative answer given to a question whether a pregnant virgin may be married to a high priest (who is Biblically forbidden to marry any woman other than a virgin), the pregnancy being explained as due to the virgin having bathed in water containing the sperm of a male who had previously used the water (*Chagigah* 15a). A later medieval source, similarly acknowledging the possibility of such an artificial (albeit accidental) insemination, warned women against using the bed-linen of strangers, "lest she be impregnated by absorbing the sperm from another man, as a safeguard against a brother marrying his sister (who, unknown to either, have a common father, viz. the man who may have one child by his wife and another through the accidental impregnation of the woman who used his linen)" (BaCH and TaZ, *Yoreh De'ah*, 195, citing *Hagahot SeMaK*).

In the opinion of most, though not all, authorities these passages clearly indicate that (1) an artificial insemination of a married or closely-related woman does not constitute adultery or incest, (2) consequently a child so conceived is not a *mamzer*, and (3) the donor is the legal father of such a child and may, in fact, have fulfilled the precept of procreation in

\* For a comprehensive review of the fairly extensive rabbinical literature on the subject see Immanuel Jakobovits, *Jewish Medical Ethics*, 1962, pp. 244 ff.



respect of it. The author adduces several proofs to corroborate the major conclusion (1), among them the explicit statement of Maimonides that the prohibition of incest is limited to sexual contact between the offending parties (*Mishnah Commentary, Sanhedrin, 7; and Horiyot, 2*).

In the strictly legal sense, therefore, artificial insemination may not violate any cardinal laws of immorality. Nevertheless, Rabbi Weinberg is implacably opposed to sanctioning the practice, both on moral grounds and for fear of grave abuses, and he condemns it as "an act of hideousness and an abomination" incompatible with the traditional chastity of Jewish womanhood. A child so conceived might unlawfully free its mother, if she were widowed, from the levirate bond on the mistaken assumption that it was fathered by her husband, whereas in fact he died childless. By the same token, such a child might inherit the putative father and thus deprive his true heirs of their rightful heritage. As a far more serious consequence, the practice might well lead to incestuous marriages and widespread debauchery. Since the operation is always carried out clandestinely and the child born by it fraudulently registered in the name of the mother's husband, its real paternity could never be established and its true blood relatives (by his natural father, i.e., the donor) would be as unknown to the child itself as to anyone else, including the mother and the donor himself. The practice would also provide any adulteress or unwed

mother with a convenient alibi, enabling her to claim that her pregnancy resulted from artificial insemination and not from the meretricious relationship of which she was actually guilty.

Certain legal disabilities would also ensue. A woman pregnant by artificial insemination would be debarred from relations with her own husband during the period of the pregnancy and lactation, since she must be regarded as "a woman carrying and nursing a child by another man" thus restricted. The child, again, since its paternity is unknown, would have to be considered a semi-foundling and be subject to the marriage disabilities appertaining to that status.

[With one notable and heatedly debated exception (see R. Moshe Feinstein, *Igrot Mosheh, Even HaEzer*, no. 10), this unconditional proscription of artificial insemination by donor is shared by all leading rabbinical authorities who have dealt with the matter.—I.J.]

However, regarding artificial insemination from the husband (in cases where some physical or psychological impediment renders a successful impregnation under normal conditions impossible), Rabbi Weinberg inclines to a more lenient ruling, as do most other recent responsa on the subject. Since the semen obtained from the husband to this end directly serves the purpose of procreation, this operation may be permitted with even less qualms than to procure the husband's sample for semen-testing, which has also been sanctioned as serving procreative ends (responsa MaHaRSHaM, part iii, no 268,

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and others).

### MITZVAH OBSERVANCE FOR SPACE TRAVELLERS

How are spacemen in orbit to fulfill religious observances which depend on the count of days and nights? This up-to-date—or up-to-the-future—question is discussed at some length and with considerable erudition in a contribution by Rabbi David Shlush in *Torah shebe'al Peh* (Jerusalem 5725), the transactions of the Seventh Congress of the Oral Law published by the Mosad Harav Kook under the editorship of Yitzchak Raphael. Orthodox Jews are not yet among the select ranks of space-travellers, so that the answer here precedes the question. But just as the science-fiction of yesterday has become the science of today, the Halakhah-fiction of today may well turn into the Halakhah of tomorrow.

At the outset the author cites an intriguingly relevant *Midrash* to determine whether the laws of the Torah are altogether applicable outside our planet and its atmosphere, as the Torah—which is “not in heaven”—may be restricted to earth-dwellers. The *Midrash*, on the verse “And he (Moses) was there (on Mt. Sinai) with the Lord forty days and forty nights” (Ex. 34: 28), asks “How did Moses know when it was day?” and answers “When he was taught by God the Written Law he knew it was day, and when he was taught the Oral Law he knew it was night” (*Tanchuma, Tissa*, 36). It is not explained, however, why Moses needed to distinguish between day and night.

According to Rabbi J. M. Tucatzinsky (in his book *Ha-Yomam*), Moses needed to know the count of days while on Sinai in order to establish when to observe the Sabbath every seventh day. Hence, he deduces that dwellers at the North Pole, who do not see the sun rise or set for months, should fix their Sabbath following every six periods of twenty-four hours. But a commentator (*Eitz Chayyim*, on *Tanchuma*, *loc. cit.*) understands the *Midrash* to refer to the recital of the *Shema* in the mornings and evenings.

Rabbi Shlush rejects both explanations, arguing that during his sojourn with God Moses required neither the Sabbath nor the *Shema* to remind him of God's creation and unity. Instead, the *Midrash* is simply intended to explain the frequent reference to “forty days and forty nights,” since “forty days” alone would have been sufficient to indicate that Moses did not return from the mountain each night during the forty-day period of his stay with God. Detached from all earthly surroundings and needs (e.g. neither eating nor drinking), Moses recognized the distinction between day and night only by alternating his studies between the Written and the Oral Laws.

While the *Midrash*, then, may have no direct bearing on the liability to observe *Mitzvot* in outer space, it is evident to the author that the laws of the Torah are incumbent on astronauts since, even in space, they remain bound to the conditions of life on earth, being sustained in their earth-constructed sphere by food and air taken from

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earth.

To determine the time of the Sabbath, three distinct calculations of days are used according to circumstances:

(1) From sun-down to sun-down. For instance, travellers from East to West count the days by sun-down at the place of arrival, even though a single such day may greatly exceed 24 hours (e.g., for a traveller at the speed of the earth's rotation leaving China at midday on Friday westwards and arriving at the same hour in the Western United States, the Sabbath is not observed until sun-down there, although his Friday will have lasted 37 hours).

(2) According to the place of arrival, without considering either the number of hours or of sun-downs. Thus, if the traveller continued his journey and reached his starting point in China 24 hours later (i.e., by then midday Sabbath there), he observes the Sabbath only for six hours—from the moment of arrival until sun-down (the local termination of the Sabbath), although his flight made him miss the seventh sun-down that week at the start of the Sabbath.

(3) By 24-hour periods. This applies to dwellers at the Poles who observe no sun-set for six months and who therefore fix their Sabbath following every six 24-hour periods.

After a lengthy discussion of the sources and various opinions on these rulings,\* the author concludes that astronauts in orbit around the

earth should observe the Sabbath between every seventh and eighth sun-down they see during their flight, i.e. for about 90 minutes in every 10½ hours (assuming their orbit is fairly close to earth). He defends this view on the ground that the local determination and the 24-hour period (examples 2 and 3 above) apply only where the Sabbath would otherwise conflict with its local observance (e.g., for the traveller returning to China) or else last for one year in every seven (at the Poles, where sun-down occurs only once a year). In our case, however, the Sabbath is properly determined by the count of sun-downs, however frequently these may be observed while in orbit. For the Torah makes the Sabbath dependent on "your habitations," i.e. local variations, and even the original Sabbath at the time of creation presumably started and ended at different times following the course of sun-set around the world (cf. responsa *RaDBaZ*, no. 76). And since the principal purpose of the Sabbath is to remember God's creation of the world in six days followed by the Sabbath, with each reckoned by "and it was evening and it was morning," the Sabbath "day" should be determined by "day" and "night" as apparent to the satellite "dwellers."

But this consideration does not apply to the festivals which are fixed by the days in the month (see the emphasis in Ex. 12:18 and Lev. 23:32), i.e., by the phases of

\* Cf. also "The Sabbath and the Dateline," in this Department, *TRADITION*, Fall 1962, pp. 92 ff.

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the moon. Since these phases are the same for men in orbit as for those on earth, the festivals (including *Yom Kippur*) should be observed in space as on earth, starting from the moment the satellite is over a point where the festival begins on the ground and then continuing for 24 hours.

Regarding other observances depending on time, Rabbi Shlush reaches the following conclusions: *Tzitzit*, since one is obligated to wear them only when one can "see them" by natural light, need be worn only during daylight periods in orbit.

Daily prayers, i.e., *Shacharit*, *Minchah* and *Ma'ariv*, should be recited only once every 24 hours, but at times corresponding to morning, afternoon and evening respectively in the orbital day.

*Shema*, to be read "when thou liest down and when thou risest up," should be recited by astronauts before and after their sleeping periods.

*Tephillin* should be worn by space-men while reciting their morning *Shema*, provided this is in their day-time and not on their Sabbath or festival.

These rulings may well be subject to further debate before they are applied in practice. Meanwhile it may be good counsel to advise any Jew venturing into outer space to recite *Shema Yisrael* all the time pending his safe return to *terra firma*.

### "IN MEMORY OF THE DESTRUCTION"

A deeply meaningful Jewish practice, now largely in desuetude,

is discussed in a contribution to *Ha-Maor* (January 1966) by Rabbi Shalom Yechezkel Rubin Halberstam, the Cheshinover Rebbe. According to a rule in the *Shulchan Arukh* (*Orach Chayyim*, 560:1), based on a Talmudic enactment (*Bava Batra* 60b), one should not build a fully decorated house, but just plaster or stucco the walls, leaving bare a square cubit facing the door, as a memorial to the Destruction of the Temple. What explains or justifies the widespread disuse of this law, and how far is its observance mandatory under present conditions?

While homes bought from non-Jews are excluded from this law (*ib.*), those purchased or rented from Jews are not, and a square of plaster must be "peeled off" in them (*Magen Avraham*) to expose the bare stones, bricks, or wooden wall. Nor is it proper to paint the square black, as was often done, as this too is decorative, however evocative of sadness the black coloring may be (*Peri Megadim*). From the *Magen Avraham's* wording it would appear that the duty to remove the plaster applies only if it is known that the plastering was unlawfully completed in the first place, i.e. if the house was built by a Jew specifically for Jewish occupants. It would follow that the square need not be bared if the house was not originally constructed specifically for Jews. In such a case, then, neither the Jewish builder or owner nor the Jewish tenant commit any offense if they leave the decoration complete—the former because he built the house not for his personal

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use but for profit, and possibly for a non-Jewish occupant, and the latter because the removal of the plaster is not obligatory unless its placement in the first instance was definitely in violation of the law. Hence, the practice was often not observed even in pious Jewish homes in Europe.

Nevertheless, no such excuse is valid for Jews who build homes for themselves. They should positively leave a corner bare, preferably in the hall facing the main entrance, so as to be reminded of the Destruction on entering their home.

### CHANGING PRAYER RITES

In another brief contribution to the same issue of *Ha-Maor*, Rabbi Meir Blumenfeld deals with a problem rendered increasingly frequent with the proliferation of small "Shtibl" congregations. At one such new synagogue, where some worshippers were used to the Ashkenazi rite and others to the Sephardi rite, it was decided to do justice to both by having the entire congregation alternate between the

two rites every month.

The author rejects this solution as clearly "a practice of ignorant people, erring in the weighing of opinions and opposing all accepted traditions." Any traditional *Minhag* (custom), particularly in liturgical usages, is inviolable and must not be changed. Thus R. Isaac Luria ("Ari") objected to changing any local prayer custom "because there are twelve gates in Heaven parallel to the twelve (Israelite) tribes, and each tribe has its own gate and custom, apart from (the texts) mentioned in the Talmud common to all" (*Magen Avraham, Orach Chayyim*, 68:1; based on *Jer. Eruvin*, 3). This objection applies specifically to any change from the Ashkenazi to the Sephardi rite or *vice versa* (*Peri Megadim*); each group should abide "by its own flag," for "these and those are the words of the living God" (*SHeL-AH, Torah shebiktav, Bamidbar*). Hence, the action of the congregants in switching from one rite to another is definitely against the law.