

The author of this essay is Rabbi of The Yorkville Synagogue — Congregation B'nai Jehuda and teaches philosophy at Hunter College of the City University of New York, and the James Striar School of Yeshiva University.

A REVIEW OF HALAKHIC LITERATURE PERTAINING TO THE REINSTITUTION OF THE SACRIFICIAL ORDER

“... All the conversations of mankind centre around the land. . . All the prayers of Israel centre around the Temple . . . *'Mari matai yitbeni Bet ha-Mikdash* — Lord, when will the Temple be rebuilt?” (*Bereshit Rabba*, XIII, 2)

A chain forged of the prayers and yearnings of centuries rivets the Jew to Jerusalem with a binding force and tenacity greater than that of an iron bond. Despite the length and vicissitudes of the dispersion, at no time were the links of this chain severed, in no place were they corroded. The Temple ruins, standing desolate in far-off Jerusalem, were always, to the Jew, the focal point of his dreams and aspirations. His heart in the East, his thoughts attuned to Zion, wherever his physical abode, he stood “before thy gates, O Jerusalem!”

The dramatic events of this past June have made the concern of ages even more vivid. During the ensuing months, to a greater degree than ever before, the hearts and minds of world Jewry have been filled with solicitude and care for the Land of Israel. The newly-recovered Holy Places command the attention and dominate the conversation of Jews everywhere. Overnight, Halakhah has been called upon to grapple with a whole new set of problems — problems, which

although intrinsically old, are new in the imminence of their applicability. Questions regarding sanctity of the Temple site, entry onto the Temple mount and even the possibility of resuming the sacrificial service have now been transformed into halakhic issues begging for clear-cut and definitive answers.

To Torah students examination of these topics was never a mere academic exercise upon which scholars, seeking to develop intellectual acumen and halakhic prowess, honed their minds. Even though its laws are temporarily in abeyance, *Seder Kodshim*, an integral part of Divine Revelation, was always approached with reverence and zeal in the true spirit of *Torah li-shmah*. Such study may often have been denigrated and relegated to the realm of the irrelevant and the inconsequential; cynics may have scoffed and do indeed continue to quip that this involvement with charting “the pathways to the Kingdom of Heaven” is misplaced. Yet it is precisely this concern that is so eloquent a testimony to the

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abiding *emunah* of the Jew, to his recognition of the intrinsic worth of every facet of Torah study and to his vivid and eager anticipation — “*mehera yibaneh ha-Mikdash!*”

Needless to say, in the normal course of communal life questions of immediate relevance had primary claim on the time and attention of Torah authorities and their investigation quite naturally superseded that of areas divorced from practical application. Moreover, the student of *Kodshim* was at an added disadvantage in that this discipline was surrounded by a labyrinth of abstract technicalities and he was accordingly forced to conceptualize with regard to matters which did not fall within the pale of his experience. The result was the relative neglect of *Seder Kodshim*, a development already decried by so early a figure as the Rambam (*Commentary on the Mishnah*, Introd. to *Seder Kodshim*), and a consequent paucity of halakhic literature pertaining to this field of inquiry.

While the specific question of re-institution of the sacrificial rites has been discussed from time to time in rabbinic writings, for the most part these discussions are recondite analyses of an already obscure subject. Nevertheless, despite the intricate nature of the subject matter, its current relevance demands that we strive for an understanding and appreciation of the grave halakhic issues involved. This review has been undertaken as an attempt at least partially to acquaint the reader with the nature of these issues

and to delineate the maze of halakhic difficulties with which they are fraught. As such the scope of this presentation is far from exhaustive. Hopefully, the reader will find his appetite whetted and will be prompted to peruse the original sources.

The rebuilding of the *Bet ha-Mikdash* itself is unquestionably precluded until the coming of the Messiah.¹ Rashi in his commentary on *Sukkah* 41a and *Rosh ha-Shanah* 30a states that the third Temple will not be a human artifact but shall miraculously appear as a fully built edifice. According to Rashi's opinion the verse, “The sanctuary, O Lord, which Thy hands have established” (Exodus 15:17) refers to the future *Bet ha-Mikdash*.² The Rambam, on the other hand, enumerates the building of the *Bet ha-Mikdash* as one of the 613 commandments.³ Since the very nature of a commandment implies a deed to be performed by man rather than an act emanating from God, the Rambam obviously maintains that the *Bet ha-Mikdash* will be the product of human endeavor. However, he states explicitly that this *Bet ha-Mikdash* will be rebuilt only with the advent of the Messiah himself. Not only will the Temple be built by the Messiah but this construction will serve as substantiation of the messianic claim. “. . . If he builds the *Bet ha-Mikdash* on its site and gathers in the dispersed of Israel. *he* is, in certainty, the Messiah.” (*Mishneh Torah, Melakhim*, XI, 4)

The proposal to reestablish the

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sacrificial rites despite the absence of a *Bet ha-Mikdash* is based upon the statement of Rabbi Joshua ('*Eduyot* VIII, 6 cited *Shevuot* 16a and *Megillah* 10a) "I have heard that [it is permitted] to sacrifice although there is no Temple." This dictum is accepted by the Rambam as authoritative (*M. T.*, *Bet ha-Bechirah*, VI, 15).⁴ Further confirmation that the offering of sacrifices in our own day is at least a theoretical possibility is to be found in the Rambam's statement (*M. T.*, *Ma'aseh ha-Korbanot*, XIX 15) that the penalty for *shechutei chutz* — the slaughtering of sacrificial animals other than at the temple site — applies also in our time. Since the penalty is applicable only in those instances in which the animal is *ra'uy le-fnim* — where there are no halakhic impediments to its being offered as a sacrifice at the proper site — the apparent conclusion is that Maimonides accepted, at least in theory, the possibility of reinstitution of the sacrificial service.⁵

There is also some historical evidence that sacrifices — particularly the paschal sacrifice — were offered sporadically during the period immediately following the destruction of the Temple. R. Jacob Emden (*She'elat Ya'avez*, Vol. I, No. 89) identifies the Rabban Gamliel quoted in *Pesachim* 74a as commanding his servant, Tabi, "Go and roast the Pesach sacrifice," with the Rabban Gamliel who served as head of the Academy in Yavneh after the destruction of the Temple. The *Tashbatz*, R. Simon ben Zemah Duran, in his commentary on the Hagadah, *Yavin Shemu'ah* (Livorno, 5504) makes essentially the same

point in his discussion of the section *Rabban Gamliel omer*. Further evidence that sacrifices were actually brought after the destruction is adduced by Rabbi Zevi Hirsch Chajes in his Responsa, nos. 2 and 76 and chapter 2 of his *Darkei Hora'ah*.⁶ These historical contentions are rebutted by R. Chaim Nathanson in his *Avodah Tamah* (Altona, 5632).

Whatever may have been the case in the period immediately following the destruction of the Temple, the centuries which ensued witnessed the total abrogation of the sacrificial rites.⁷ For generations resumption of sacrifice was at best a theoretical possibility; its translation into practice could have been no more than an ephemeral phantasy. Nevertheless, the report of a concrete proposal for the reinstitution of sacrifices occurs in an early 14th century work entitled *Kaftor va-Ferach* written by R. Ishturi ha-Parchi, a victim of the French expulsion. The author recounts having brought his manuscript to a certain Rabbi Barukh in Jerusalem in order that the latter might examine and correct the work prior to publication. Rabbi Barukh is reported to have informed the author of *Kaftor va-Ferach* of the surprising fact that in the year 5017 Rabbenu Yechiel (or Rabbenu Channanel or Rabbenu Chayyim, depending upon the variant textual readings)⁸ of Paris wished to emigrate to Israel and there to offer sacrifices. The author raises certain objections but states that due to the pressure of reviewing the manuscript he did not pursue the matter by discussing the questions involved with his mentor. Quite evidently

nothing came of these plans; Rabbi Chaim Nathanson in the *Avodah Tamah* concludes that undoubtedly the French scholar was dissuaded from doing so by the sages of his generation.

Once more the issue recedes into the background. Nothing more is heard of the proposal and the entire question is permitted to lie fallow until the middle of the 19th century when we find a new protagonist actively espousing resettlement of the Holy Land and reintroduction of sacrificial worship. In a letter addressed to Baron Asher Anshel Rothschild, dated 12 Elul, 5596, Rabbi Zevi Hirsch Kalisher solicits the latter's support for plans to colonize the Land of Israel and outlines his views regarding the sacrificial rites. When these opinions regarding resumption of the sacrificial service were incorporated in a work entitled *Derishat Zion* and published a little over 100 years ago, in 5622, the question for the first time became a live issue.⁹ Considerable controversy was aroused and resulted in a meticulous examination by the foremost authorities of the time of the halakhic issues surrounding the proposed innovation. Opposition to Kalisher's views was of a dual nature. Apart from the controversial halakhic ramifications of his proposal, Kalisher's novel eschatological views caused many of his contemporaries to take sharp issue with him. Kalisher argues not only that reinstitution of the sacrificial rites is both permissible and halakhically feasible but that it constitutes a positive mitzvah and is in addition a *sine qua non* for the advent of the Messiah. The redemp-

tion, he maintains, will take place in the following manner: first, a partial in-gathering of the exiles to be followed by the reinstitution of *korbanot*; after this will occur the war between Gog and Magog and the complete in-gathering of the exiles culminating in the advent of the Messiah. As evidence for his position Kalisher cites the statement of the *Yerushalmi* as quoted by *Tosfot Yom Tov, Ma'aser Sheni*, V, 2: "The Temple [will] be rebuilt before the reign of the House of David."¹⁰ Referring to the *Sifri* cited by Nachmanides in his commentary on Deuteronomy 12:5, Kalisher maintains that the offering of sacrifices is causally connected with the reappearance of prophecy and has as its effect the manifestation of the divine presence just as the *Shekhinah* appeared in the tabernacle in the wilderness only following the sacrificial offerings of the *milu'im*. Therefore, he concludes, reinstitution of the sacrificial rites is not dependent upon a prophetic injunction; rather prophecy cannot become manifest without prior sacrificial offerings.¹¹

In a letter to Kalisher the famed R. Nathan Adler cites Rashi in his commentary on *Sukkah* 41a and *Tosfot Shevu'ot* 15b to the effect that not only the Temple itself but also the altar and all utensils and appurtenances of the third Temple will be built miraculously by God by means of a heavenly fire. Since miraculous occurrences are to be anticipated only after the coming of the Messiah, the opinion of these authorities obviously contradicts the view of the Palestinian Talmud as cited by Kalisher. Rabbi David

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Friedman in a short treatise entitled *Kuntres Derishat Zion ve-Yerushalayim* and published as the opening section of his *She'elat David* maintains that the reading cited by Kalisher and *Tosfot Yom Tov* is erroneous and that the correct textual reading is "Jerusalem will be rebuilt" not "the Temple will be rebuilt." Furthermore, he argues, from the context of the statement in the *Yerushalmi* it is not at all evident that this is an assertion of a *necessary* order of events leading to the redemption (as Kalisher opines) but, on the contrary, merely of a *possible* order. Thus even accepting Kalisher's reading, the *Yerushalmi* falls short of stating that the Temple *must* be rebuilt as a prerequisite to the advent of the Messiah. In the 'amidah as ordained by the Men of the Great Assembly, the blessing pertaining to the reinstitution of sacrifices follows the blessings alluding to the in-gathering of the exiles, the rebuilding of Jerusalem and the restitution of the House of David. This order is seen by Friedman as corresponding to the optimum chronological sequence, whereas according to Kalisher the order is sequentially impossible and hence without apparent rhyme or reason.

R. Jacob Ettlinger in the first responsum of the *Binyan Zion* (Altona, 5628) states that the authoritative order of the redemption is that given by the Gemara in *Megillah* 17b. There we find the following sequence: the rebuilding of Jerusalem, the re-establishment of the Kingdom of the House of David, the rebuilding of the Temple, which shall become a place of

prayer for all peoples, and finally the reinstitution of the sacrificial rites. This order is reflected in the blessings of the 'amidah which were sequentially ordained by the Men of the Great Assembly in a manner paralleling the chronological unfolding of events leading to the redemption. We may accordingly infer that sacrifices cannot be reinstituted until after the re-establishment of the House of David and the rebuilding of the Temple.¹² To this argument Kalisher replies that indeed the reinstitution of sacrificial offerings including private sacrifices is impossible without the coming of the Messiah — and it is to such individual sacrifices that the Gemara and the liturgy refer. Nevertheless communal sacrifices can be reinstituted according to his view even though there is no *Bet ha-Mikdash*.

In addition, it is of interest to note that contemporary scholarship has uncovered manuscript evidence in contradiction to Kalisher's thesis. Rabbi Menachem Kasher in an appendix to vol. 12 of the *Torah Sheleimah* (New York, 5708), p. 165, cites a reading of the previously unknown *Midrash Tannai'im*: "Just as you are unable to offer the *Pesach* other than in the Temple, so also with regard to leap years — you shall not ordain leap years other than [when] the Temple [stands]." The obvious inference is that sacrifice of the *korban Pesach* is unsanctioned until such time as the Temple shall be rebuilt.

Kalisher's vigorous advocacy of reinstitution of the sacrifice met with determined opposition on the grounds of halakhic technicalities

as well. In his own day rabbinical authorities of world repute such as R. Akiva Eiger, R. Moses Sofer and R. Jacob Ettlinger contended that there exist halakhic impediments which completely nullify the proposal. Despite Kalisher's assertions to the contrary, there is no evidence that any of these three halakhic personalities became reconciled with Kalisher's views. Of the three, R. Jacob Ettlinger published his opposition to Kalisher's proposal as the very first responsum in the *Binyan Zion*, R. Moses Sofer limits the proposal to the *korban Pesach* alone and R. Akiva Eiger, despite a protracted correspondence with Kalisher, never reversed his views on the subject. Kalisher's work led to the composition of the *'Avodah Tamah* by R. Chaim Nathanson and the *Migdal David* by R. Alexander David of Lissa, both of which are polemical in nature and devoted to the express purpose of refuting Kalisher's contentions. The controversy gave rise to much heated debate which has continued unabated into recent times.¹³ Alluring as it may have been, Kalisher's proposal was deemed unfeasible in practice. Seen as constituting potential barriers to the implementation of the sacrificial services were the concrete questions of ritual impurity, the sanctity of the Temple site, genealogical purity of the *kohanim*, ascertaining the precise location of the *mizbeach* (altar) and its construction, unavailability of the materials required for weaving the priestly garments, problems involved in the appointment of a High Priest, collection of *shekalim*, inauguration of the *Kohanim* and

dedication of the altar.

TUM'AH

Admitting the contention that the building of the *Bet ha-Mikdash* itself is manifestly impossible without prophetic direction — in the words of Scripture "All this in writing, as the Lord has made me wise by His hand upon me" (Chronicles I, 28:19) — Kalisher points out that only the *mizbeach* is necessary in order to offer sacrifices and indeed Ezra reinstituted *korbanot* long before the Temple was completely rebuilt. He then himself voices three possible objections to his proposal and endeavors to obviate each in turn. The first problem is that one may not enter the Temple site nor offer sacrifices in a state of ritual impurity. At present, however, we have all been defiled through contact with the dead and lack the ashes of the red heifer to effect the requisite purification. The general principle that communal sacrifices may be offered in a state of ritual impurity, if there is no alternative,¹⁴ applies not only to the actual sacrificial acts but also to preliminary entry into the Temple mount in order to carry out the necessary preparations.¹⁵ Accordingly Kalisher limits his proposal to communal offerings and to the paschal sacrifice to which the principle *tum'ah dechuyah be-zibur* is applicable.

PRIESTLY YICHUS

Less readily resolved is the problem of authenticating the claims of present-day *kohanim* to be recognized as descendants of the priestly

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family. Ezra demanded written pedigrees: "These sought their register, that is, the genealogy but it was not found; therefore they were deemed polluted and put from the priesthood" (Ezra 2:62). Applying himself to this issue — one already raised by the author of *Kaftor va-Ferach* — Kalisher argues that documentary evidence was necessary only in the time of Ezra since many scions of the priestly family had intermarried with gentiles during the course of the Babylonian exile. Once the claims of these aspirants to the priesthood were examined and verified they and their descendants remained *bechezkat kashrut* and required no further credentials. In support of this view Kalisher cites the *Mishnah 'Eduyot* VIII, 7, "Elijah will come neither to defile nor to purify, neither to draw nigh nor to put aside," which he understands, as referring not merely to questions of legitimacy of birth but to claims of priestly descent as well.¹⁶

In his *Binyan Zion* R. Jacob Ettlinger disagrees with Kalisher's interpretation of this *Mishnah*. *Tosfot*, (*Sanhedrin* 51b and *Zevachim* 45a) questions why this statement of the *Mishnah* does not constitute a *hilkhata le-meshichah* — a decision applicable only in the days of the Messiah. As such this statement seemingly contradicts the procedural principle that such decisions will be left for the Messiah himself to render and consequently are not included among Talmudic dicta. Since *Tosfot* fails to answer that such a statement is necessary in order to sanction the services of *kohanim* prior to the advent of the

Messiah, R. Jacob Ettlinger concludes that the *Mishnah* in question refers only to questions of legitimacy and bastardy and does not encompass the question of priestly genealogy.

R. Akiva Eiger takes issue with Kalisher regarding the requirement for supportive evidence for priestly *yichus*. He maintains that genealogical claims of present-day *kohanim* are uncorroborated and therefore remain in doubt. The Chofetz Chaim (*Zevach Todah*,¹⁷ *Zevachim*, ch. 13) also shares this view. This position is further elucidated by R. David Friedman who quotes the exposition by the *Sifri*, *Parshat Shofetim*, of the verse: "One witness shall not rise up against a man for any iniquity, or for any sin, in any sin that he hath sinned" (Deuteronomy 19:15). The words "*le-khol 'awon u-lekhol chat'at*" are understood by the *Sifri* as teaching that two witnesses are necessary for both admission to the priesthood and for exclusion from performance of the priestly functions.¹⁸

Historically, despite the scrupulous manner in which the courts guarded the priestly genealogy, we know of many uncertainties which arose as early as the Talmudic period. For example, those priests who claimed descent from the Hasmoneans were accepted as legitimate for an extended period of time until Rabbi Judah publicized their illegitimacy (*Kiddushin* 70b). Another incident recounted by the Gemara involves 4,000 priests who intermarried with the slaves of Pashchur ben 'Enur, some of whom escaped detection and were mistakenly permitted to perform the priestly func-

tions (*Kiddushin* 70b).

SANCTITY OF THE HAR HA-BAYIT

The third and perhaps the most weighty problem discussed by Kalisher involves the sanctity of the *Har ha-Bayit* (Temple Mount) following the destruction of the Temple. Kalisher assumes that according to the opinion of Rabad, who maintains that the sanctity of the Temple was abrogated upon its destruction, there ensues no problem regarding sacrifices at the present time. Kalisher maintains that according to Rabad even *bamot* or private altars are now permissible as they were prior to the erection of the Temple; hence an altar erected on the Temple mount would qualify for the offering of sacrifices no less than a private altar. The Rambam declares that the original *kedushah* or sanctification of the Temple site continues to be in effect and has not been nullified by the destruction of the Temple. According to this view an altar built on the Temple site retains the original *kedushah*.

In a responsum addressed to Kalisher and incorporated in the *Derishat Zion* R. Akiva Eiger takes strong exception to Kalisher's proposal. R. Akiva Eiger's first objection is voiced in a cryptic statement asserting that we cannot effect a decision with regard to the controversy between Rambam and Rabad concerning the sanctity of the *Bet ha-Mikdash*. R. Friedman, in the previously cited preface to the *She'elat David*, notes that Rabad expresses no disagreement with Rambam's position (*M. T.*, *Bet ha-*

Bechirah, I, 3) that once the Temple was erected the prohibition against private altars became permanent and accordingly continues in effect even after the destruction of the *Bet ha-Mikdash*. Rambam's position in this matter is entirely consistent since he is of the opinion that the original *kedushah* or sanctification of the Temple site continues in effect and has not been nullified by the destruction of the Temple. Rabad, who disagrees and maintains that the original sanctification lapsed with the destruction of the Temple, would hence have been expected to append a gloss disagreeing with Rambam's statement regarding the permissibility of private altars in the period following the destruction of the Temple. Since he fails to do so, R. Akiva Eiger apparently concludes that Rabad agrees with the *Rabbenu Channanel* quoted by *Tosfot Zevachim* 61a and maintains that *bamot* are now forbidden even though *kedushah rishonah lo kidshah le'atid lavo*. Accordingly, since the sanctity of the *Bet ha-Mikdash* has lapsed, an altar on the Temple mount *bezman ha-zeh* would constitute a *bamah* according to Rabad and is therefore forbidden, as are all private altars.

R. Friedman suggests one possible manner in which the inauguration of sacrificial offerings may be considered. The feasibility to be considered hinges upon a conditional sanctification of the sacrificial animal under a formula pronouncing that if indeed the Temple mount retains its sanctity as a *Bet ha-Mikdash*, as is Rambam's view, then the animal is indeed sanctified

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as a *korban Pesach*, and the slaughter of the animal and the sprinkling of its blood be effective for sacrificial purposes; but if on the other hand the sanctity has lapsed, as is Rabad's opinion, then the sanctification of the sacrificial animal be null and void and the subsequent slaughter of the animal and the sprinkling of its blood and burning of its flesh be secular in nature. This suggestion is rejected by R. Zevi Pesach Frank (*Kuntres Har Zevi* appended to *Teshuvot Har Zevi*, Jerusalem, 5724)¹⁹ on the grounds that the priestly garments contain a mixture of linen and wool and as such cannot be worn other than for the purpose of performing the sacrificial rites. In the event that such an offering does not in reality constitute a sacrifice, as would be the case according to Rabad, the officiating priest would then be violating the prohibition of *shatnez*. R. Frank rejects the argument of R. Zevi Hirsch Chajes and others that the benefit derived is an unintentional one and hence not prohibited. Basing himself upon the treatment of the topic by the *Bet ha-Levi*, I, nos. 1-3, he maintains that since no additional garments other than the priestly vestments may be worn while performing the *avodah* the benefit is inescapable — a *pesik reshah*—which is forbidden even though the benefit is unintentional. Furthermore R. Frank points out that the *korban Pesach* (which, for reasons which will be noted, is the only sacrifice whose inauguration can be seriously considered) could not be offered on a private *bamah* even during the periods when private altars were per-

missible. This principle is clearly enunciated in *Zevachim* 104b.

Moreover, R. Frank expresses astonishment that R. Akiva Eiger did not comment on the logical inconsistency inherent in Kalisher's proposal. According to Rabad a *mizbeach* erected on the Temple site is to be considered a private altar. Hence, according to Rabad communal sacrifices are impossible in our day since even an altar on the Temple mount would have the status of a *bamah* and communal sacrifices cannot be offered on a private altar. But according to the Rambam, who maintains that the original sanctity prevails even after the destruction, the question of re-establishment of the sacrificial rites arises *only* with regard to communal sacrifices since it follows from his position that only communal sacrifices may be brought in the state of *tum'ah* (impurity). Kalisher's argument is thus dramatically demolished by R. Zevi Pesach Frank.

R. Friedman raises an engaging question based upon the ramifications of Rabad's position. As established by R. Zechariah ha-Levi, author of the *Chinukh*, the commandment to build a *Bet ha-Mikdash* is not deemed to be incumbent upon us except at such time as a majority of Jewry resides in the Land of Israel. (The building of the Second Temple by Ezra, even though this condition was not fulfilled, was the result of specific prophetic edict.) Nevertheless, the rebuilding of the Temple should be obligatory according to Rabad, not as an intrinsic obligation, but because the attendant sanctification is requisite

in order to fulfill the mandatory obligation of offering sacrifices. The offering of sacrifices, if not for technical impediments, would, of course, be mandatory even in contemporary times. Friedman concludes that the prospect of rebuilding the Temple cannot be entertained by us since the Mishnah (*Shevu'ot* 14a) declares that sanctification of the Temple area requires a king, a prophet, the *urim ve-tumim* and the *Sanhedrin*. Although there is one opinion in the Gemara that any one of the four requirements enumerated is sufficient, we do not possess any of them at present. In addition, though a prophet, according to this opinion, may not be required for the act of sanctification, the *korban todah* (thanksgiving sacrifice) offered on that occasion requires a prophet in order to direct the manner in which it is to be sacrificed. Moreover, notes R. Friedman, the Rabad himself states that Ezra did not promulgate a perpetual *kedushah* because he knew by means of the Holy Spirit that eventually both the Temple site and Jerusalem itself would be expanded and the enlarged boundaries would be sanctified with enhanced and unprecedented glory; therefore it does not behoove us to sanctify the Temple mount other than according to the directions of a prophet.²⁰

MIZBEACH

As previously indicated a *Bet ha-Mikdash* is not necessarily required for the offering of sacrifices. Yet any sacrifice must be offered on the precise location of the original al-

tar. In the Rambam's phraseology, "*mekom ha-mikdash mekhuvan beyoter* — the site of the altar [is located] with extreme precision." This spot, hallowed through the ages, is pin-pointed by tradition as the exact site of Adam's first sacrifice to the Almighty, of Noah's offering upon emerging from the Ark and of the binding of Isaac. The difficulties in the task of locating this site with exactitude are such that the Gemara (*Zevachim* 62b) relates that at the time of the construction of the Second Temple the location of the altar was revealed by a prophet who returned from Babylonia for this purpose. Kalisher maintains that this was necessary only because no remnant whatsoever remained of the First Temple as was foretold: "Rase it, rase it, even to the foundation thereof" (Psalms 137:7). Of the Second Temple, however, there are yet extant sections of the walls; these, Kalisher asserts, may be utilized for purposes of determining the distance between the walls and the altar. In the previously cited responsum R. Akiva Eiger argues that we cannot rely on our measurements in order to determine the exact location of the *mizbeach* since these measurements are based upon the *tefach* or handbreadth measuring four fingerwidths. These dimensions cannot be determined with exactitude at present since physical proportions have changed over the course of centuries. Although various halakhic standards dependent upon these measurements may vary according to the average physical proportions of mankind in each generation, stand-

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ards derived in this manner cannot enable us to measure geographical distances and locate spatial points which are unvariable.

Rabbi Friedman expresses the same objection, but with a most interesting twist. Our point of demarcation in any such attempt at determining the location of the *mizbeach* is the Wailing Wall. Our authority for identifying the *kotel ma'aravi* with the western wall of the Temple is the statement found in the Midrash *Tanchumah*, *Shemot*, that the western wall will never be destroyed.²¹ We are, however, governed by the principle that halakhic applications may not be derived from aggadic sayings. This principle is rooted in the recognition that (1) by virtue of its figurative nature we cannot be certain of the precise meaning of the aggadah and (2) there may well be differences of opinion among the various and varied aggadic sources which are either unknown to us or not properly understood by us. With regard to this particular question, Rabbi Friedman reasons, if we are indeed to take the pertinent aggadic dicta literally, we must also be mindful that the Gemara declares (*Gittin* 57a) the place known as *Har ha-Melekh* to have contained 600,000 cities, each one serving as the dwelling place of no less than 600,000 inhabitants; but today the locale could not encompass 600,000 reeds! If this aggadic statement is to be understood literally we must conclude that now the area has shrunk in physical size. If so, this phenomenon may very well have taken place in the area of the Temple mount as well!

Then, even accepting the western wall as a landmark on the testimony of the *Tanchumah* we may still have no accurate means of measurement, for the location upon which the *mizbeach* stood originally may indeed have shifted. Furthermore, the *kotel ma'aravi* can give us only the western boundary from which to measure the distance to the location of the altar. The wall is not complete in length and therefore we cannot determine the northern and southern extremities. Hence we cannot ascertain where the altar stood *vis-a-vis* the north and south walls. Moreover, a comparison of the pertinent statements in *Yomah* 36a and *Zevachim* 53a and the Mishnah in *Midot* II, 1, discloses a basic contradiction regarding the location of the *mizbeach*. This is reflected in a difference of opinion between *Tosfot*, *Yoma* 16b and Rambam, *M. T.*, *Bet ha-Bechirah* I, 6 and V, 16. Since it is not in our power to resolve this dispute we remain in a quandary with regard to the determination of the original location of the altar. The same hesitation regarding the location of the altar is echoed by the Chofetz Chaim (*Zevach Todah*, *Zevachim*, ch. 13.)²²

The first significant modern investigation of the dimensions of the *Bet ha-Mikdash* site and its implements was that undertaken by the Slutzker Rav, Rabbi Jacob David Wilovsky. In the *Teshuvot Bet Ridvaz* (Jerusalem, 5665) No. 38, Rabbi Wilovsky questions whether the Wailing Wall is the remnant of the wall surrounding the Temple mount as is commonly assumed, or whether it is rather the wall of the

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Temple courtyard proper. His query is based upon statements found in *Teshuvot Radvaz*, vol. 1, nos. 648 and 691. He concludes that even given the measurements of Tractate *Midot* we have no single point of demarcation whose location is known with certainty.²³

In addition, the construction of the *mizbeach* entails a technical difficulty involving the stones of which the altar is to be fashioned. These must be absolutely smooth — a niche in which a fingernail may be caught renders the stone unfit for this purpose — and dare not be planed by means of a metal implement. We, of course, are not fortunate enough to possess a *shamir*, the worm employed by King Solomon to perform this task in the building of the original *mizbeach*.²⁴

PRIESTLY GARMENTS

R. Akiva Eiger, in the previously mentioned epistle to Kalisher, raises a further objection based upon the unavailability of one of the materials necessary for the weaving of the priestly garments. One of the four garments donned by the *kohanim* while performing the sacrificial rites was the *avnet* (girdle). This garment contained *tekhelet* (purple-wool), which was dyed the proper color through the use of the blood of the *chalazon*, a worm which is now either unavailable or unidentifiable. This argument is also advanced by R. Friedman, *She'elat David*, and the Chofetz Chaim, (*Zevach Todah, Zevachim*, Ch. 13). Answering the contention of the *Tiferet Yisrael* that the priestly garments do not require the

blood of the *chalazon* for the making of this dye, R. Bezalel ha-Kohen, *Reshit Bikkurim* (Vilna, 5628), Vol. II, No. 2, cites the *Tosefta, Menachot*, Ch. 9: "purple wool [dyed] other than through the use of the blood of the *chalazon* is unfit." These opinions run counter to Kalisher's view, that purple wool dyed in this fashion is not an absolute requirement with regard to the priestly garments. R. Frank in the *Har Zevi*, after examining the evidence pro and con concludes that there is insufficient halakhic evidence to resolve the issue either way.²⁵

Another material used in the weaving of the *avnet* was *argaman* or red wool. R. Akiva Eiger points out that since the nature of *argaman* is the subject of a controversy between the Rambam and Rabad we now simply have no way of determining what ingredients went into the composition of this dye. In the same vein R. Akiva Eiger maintains that a similar objection might be raised with regard to the *tola'at shani* or scarlet-colored wool since the *Tosefta (Menachot, Ch. 9)* states that only the *tola'at* which abounds in mountainous regions may be utilized in the preparation of this dye. Here again the difficulty of proper identification is insurmountable.²⁶ He further notes that there is a difference of opinion among *Rishonim* regarding the number of fabrics which went into the weaving of the *avnet*²⁷ and that in this instance as well we are not competent to resolve the disagreement. Therefore, concludes R. Akiva Eiger, since we cannot provide proper priestly vestments the *koha-*

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nim cannot possibly perform the *avodah*. This last difficulty is the subject of an appendix "that the paper shall not remain blank" appended to the final page of the *Kuntres le-Kedushat ha-Mikdash*, authored by R. Samuel David Levine and published together with his *Leshed ha-Shemen* (Vilna, 5689). This discussion examines the possibility of the *kohen* donning two *avnetim* at the same time in order to conform to the specifications of the various authorities. The question hinges upon whether or not the prohibition of *bal tosif* applies to such a contingency. (The question of *chatzitzah* is dismissed as academic because due to the fact that the *avnet* is only three finger-widths wide the two garments may be placed alongside, rather than over, one another). A similar discussion occurs in the *Taharot ha-Kodesh* by the same author (Pietrow, 5690), p. 40f.

APPOINTMENT OF THE HIGH PRIEST

In a letter to his son-in-law, R. Moses Sofer, R. Akiva Eiger adds that we are no longer able to identify the precious stones which are necessary for the vestments of the High Priest. The import of this objection is not readily apparent since sacrifices may be offered even though the office of High Priest is vacant. *She'elat David* explains R. Eiger's objection by pointing out that the final halakhic decision is *tum'ah dechuyah be-tzibur* rather than *hutrah* — the prohibition against offering sacrifices in a state of ritual defilement is merely abrogated, not nullified, with regard to

communal sacrifices.²⁸ It is therefore required that the *tzitz* or frontplate be present on the forehead of the High Priest while the sacrificial ritual is performed in order to expiate the sin of defilement.²⁹ This necessitates the prior appointment of a High Priest and his donning the eight garments of his office for the performance of his functions. However since we lack the jewels necessary for the breastplate and ephod it is impossible for the High Priest to perform his duties. The Chofetz Chaim raises the same question regarding the *tzitz*³⁰ (*Zevach Todah, Zevachim*, Ch. 13). R. Zevi Hirsch Chajes adds that we no longer possess the special *shemen hamischa* with which to anoint the High Priest and hence he cannot be inaugurated into office.

SHEKALIM

A number of letters dealing with this subject were exchanged between R. Akiva Eiger and R. Zevi Hirsh Kalisher, until the former found it physically difficult to continue the correspondence due to the infirmities of advanced age and consequently forwarded the relevant manuscripts to his son-in-law, R. Moses Sofer. In his reply, published as Responsum no. 236 in the *Teshuvot Chatam Sofer, Yoreh De'ah*, R. Moses Sofer rejects the proposal on the basis of the objection expressed by R. Jacob Emden in the *She'elat Ya'avez*, Vol. I. No. 89, in which the latter demonstrates that all communal sacrifices must be purchased with the half shekel collected from each Jew once a

year for this purpose. The obligation of *machtzit ha-shekel* is not incumbent upon us after the destruction of the Temple. Moreover, in any event it would be exceedingly difficult effectively to collect this tax from all Jews. Hence R. Jacob Emden concludes that such communal sacrifices would be impossible and he limits the pertinence of reinstitution of *korbanot* to the *korban Pesach* which is purchased with private funds. A similar view is expressed by R. Moses Sofer in the aforementioned responsum and by R. Chajes in his *Kuntres Acharon, Avodat ha-Kodesh*.

DEDICATION OF THE MIZBEACH AND INAUGURATION OF THE KOHANIM

In view of the conclusions of these authorities that other sacrifices do not come into question, R. Zevi Pesach Frank poses the problem of *chinukh* (dedication) of the altar. The *Mishnah* states explicitly (*Menachot* 49a) that a newly-fashioned altar must be inaugurated through the sacrifice of the *tamid shel shachar* and no other sacrifice may precede the morning sacrifice on the new altar. Since this sacrifice cannot be offered due to the lack of *shekalim* with which to purchase the sacrificial animal any altar constructed by us would remain uninaugurated. Consequently no other sacrifice, including the *Pesach* could be offered on this *mizbeach*.

Yet another objection was raised in a letter addressed to Kalisher by R. Elijah of Gridetz. Before any *kohen* proceeds to perform his priestly functions for the first time

it is incumbent upon him to offer a *minchat chavitin*. This meal offering has the status of a private sacrifice and as such cannot be offered when the priest is in a state of defilement. Accordingly, runs the argument, how will the priests perform the sacrificial rites since they cannot offer the inaugural sacrifice due to their defilement through contact with the dead? To this query Kalisher offers an interesting answer based upon a similar problem surrounding the inauguration of the High Priest. The *Mishneh le-Melekh* (*Kelei ha-Mikdash*, V, 16) questions how it is possible for the "substitute" High Priest to perform the ritual of the Day of Atonement in the event that it becomes impossible for the High Priest to do so. The problem is based on the fact that the High Priest has to offer a similar sacrifice as part of his inauguration into office; since this *korban* has the status of a private offering it cannot be offered on the Day of Atonement. The *Mishneh le-Melekh* concludes that the lack of such prior offering on the part of the High Priest does not invalidate his performance of the sacrificial rites and therefore in instances where this offering is impossible he may perform his duties despite its absence. Kalisher concludes that the same regulation is applicable to the meal offering of the *kohen hedyot*.

INACCEPTABILITY OF SACRIFICES

The *Binyan Zion* includes another noteworthy objection to Kalisher's proposal. R. Jacob Ettlinger's major contention is based up-

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on the verse, "And I will bring your sanctuaries unto destruction and I will not smell the savor of your sweet odors" (Leviticus 26:31). The Gemara prescribes that each sacrifice be offered with six "intentions" (*Zevachim* 46a); among these are *le-shem reach* and *le-shem nichoach*. Ettlinger argues that since God says He will not smell "the savor of your sweet odors" while the Temple lies desolate we cannot offer the sacrifice with such an intention. A similar concept is expressed independently in the *Emek Berakhah* (Jerusalem, 5708, p. 66) by Rabbi Aryeh Pomeranchik, a distinguished disciple of the late Brisker Rav. Quoting an oral tradition related in the name of R. Naftali Zevi Judah Berlin, Rosh Yeshivah of Volozin, Rabbi Pomeranchik asserts that while ordinarily a sacrifice in which these intentions are absent remains valid, nevertheless in instances when these intentions are *impossible*, the sacrifice is rendered invalid. The sole exception is the paschal sacrifice which the Torah never refers to as being offered for purposes of "a sweet odor." Rabbi Pomeranchik explains the difficult phrase in the Haggadah, "May we partake there of the sacrifices and of the paschal offerings, whose blood shall be sprinkled upon Thine altar for acceptance . . ." in light of this novel interpretation. The term *le-razon* expresses our prayer that we shall be able to offer the *Pesach* in a rebuilt Temple in a perfect manner so that it will also be accepted as "a sweet odor," although this is not strictly required in the case of the paschal sacrifice.

CONCLUDING REMARKS

Apart from the specific problems discussed there is one theme which is recurrent throughout the vast halakhic literature dealing with our topic: In this most nebulous area it is almost impossible to arrive at a definitive *pesak* with regard to the myriads of practical and concrete questions which inevitably arise. Typical of this attitude is an article which appeared in an early journal of Torah scholarship. Writing in *ha-Levanon*, Vol. I, No. 8, p. 54, R. Meir Auerbach, chief rabbi of Kalish, notes many peripheral questions involving halakhic disputes which we are incompetent to resolve. A case in point is the manner of roasting the paschal sacrifice — a matter which is the subject of a disagreement between the Rambam and the Rabad, *M. T. Korban Pesach*, X, 11. The Rambam maintains that the animal must be roasted together with its *gid ha-nasheh* (sciatic nerve). To this view the Rabad responds, "By my head! There is no greater prohibition . . . If I will be privileged and will eat the *pesach* and he should bring before me such [an animal] I would hurl it to the ground before his eyes!" Commonplace questions of *kashrut* arising from adhesions on the lung are nowadays rendered *trefah* in instances where we have no means of reaching a decision. Such questions cannot be disposed of so readily when arising with regard to sacrificial animals. One reason for this is that it is forbidden to dispose of sacrificial animals which are in reality kosher. If the sacrifice is valid the various por-

tions *must* be consumed either on the altar or by the *kohanim* or by those offering the sacrifice, as the case may be.

To illustrate the insurmountable difficulties involved in rendering a final decision in this uncharted field R. Auerbach recounts an anecdote which adds a revealing biographical note to the life of one of the luminaries in the history of Halakhah. R. Auerbach relates that R. Alexander Schorr, author of the *Tevu'at Shor* (Zolokiew, 5473), a standard and authoritative work dealing in minute detail with the laws pertaining to *shekhitah* and *trefot*, also composed a similar compendium pertaining to the laws of the sacrificial service. The latter work was patterned upon the format of the widely accepted *Tevu'at Shor*. Before his death R. Alexander Schorr ordered that the unpublished manuscript be placed in his grave. His intention was that the work not be circulated since an ultimate decision regarding these matters cannot be rendered until the advent of the Messiah.

One dare not hastily conclude that such an approach reflects a reticence born of fear or mere lethargy. Expositors of Halakhah always met the social issues of their day forthrightly and did not hesitate to legislate on every facet of personal and communal life. In all generations Torah scholars have striven to overcome any and all obstacles in order to issue halakhic rulings; consistently the attitude of *Gedolei Yisrael* has been: *yikov hadin et ha-har*. However, differing dramatically from all other areas governed by Halakhah, questions

pertaining to the construction of the *Bet ha-Mikdash* and the sacrificial order, by their very nature, occupy a unique position unamenable to the usual canons of *pesak*. Even a cursory examination of the responsa literature on this topic indicates a dearth of precedents and parallel citations, the very fabric of which legal decisions are woven. One should bear in mind that the monumental works authored by such giants of *hora'ah* as the Rif and the Rosh do not include a codification of the laws of *Kodshim*. There can be no doubt that in protesting their inability to reach halakhic conclusions — and to adduce sufficient evidence in support of such pronouncements — Torah authorities were not reflecting misplaced humility but were stating the simple truth.

Although there are manifold halakhic impediments which prevent us from fulfilling the many mitzvot attendant upon the performance of the sacrificial service, our inability to do so is certainly to our detriment: "If not for the *ma'amadot* heaven and earth would not endure," states the Gemara (*Ta'anit* 27b); the Mishnah ('Abot, 1, 2) reckons the sacrificial service as one of the pillars upon which the world stands. But with the lapse of the Temple service we are offered an equally efficacious substitute. The Gemara depicts Abraham as appearing before the Almighty and expressing his fear that the Jewish people might perhaps be destroyed in punishment for their transgressions. To this God replied, "Take for Me a three-year-old heifer." Whereupon Abraham countered,

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"That is well so long as the Temple stands but when the Temple no longer exists what shall become of them?" God answered, "I have ordained for them the order of the sacrifices. Whenever they study it I shall account it as if they had offered a sacrifice before Me and I will forgive all their sins" (*Megillah*, 31b).

Elsewhere our Sages declare that during the period of the exile worship in the Temple is supplanted by the study of the Halakhah pertaining to the *korbanot* denied us in actuality. "Anyone who engages in [the study of] the law of the sin-offering is accounted as if he had sacrificed a sin-offering" (*Menachot*, 111a). The term "*ke-ilu* — is accounted as" — is to be understood quite literally. The study of *Kodshim* effects for us the self-same benefits which flowed from the sacrificial offerings of our ancestors. If indeed *korbanot*, in addition to their other propitious effects, are also essential for the initiation of prophecy, as Nachmanides asserts, or requisite to effect the advent of the Messiah, as is Kalisher's contention, the use of the term "*ke-*

ilu" indicates that these too are attainable through the study of *Kodshim*. The Chofetz Chaim advocated the establishment of *kollelim* whose students would devote themselves to this field of scholarship. He heralded the appearance of such institutions, citing Scriptural references demonstrating that increased proficiency in precisely this area of study will speed the redemption (*Ma'amar Torah Or*, ch. 10).

"Investigate and receive reward!" exhort our Sages (*Zevachim*, 45a) in answering a query regarding the purpose of pursuing studies pertinent only during the days of the Messiah. From the words of the Chofetz Chaim it follows that they may be understood to have answered that this reward is, in its ultimate form, the very coming of the Messiah alluded to by the Talmudic interlocutor and the hastening of the fulfillment of the prophetic promise, "I shall bring them to my holy mountain . . . their burnt-offerings and their sacrifices shall be acceptable upon Mine altar, for My house shall be a house of prayer for all the nations."

NOTES

1. Cf. R. Abraham Isaac Kook, *Mishpat Kohen* (Jerusalem, 5697), no. 94. The conclusions expressed in this responsum, dated London, 21 Cheshvan, 5678, were evidently reconsidered in view of the contradictory view expressed subsequently by R. Kook in a letter of approbation to *Yaskil 'Avidi*, by R. Obadiah Hdaya (Jerusalem, 5691), vol. I.

2. Rashi's view is implicit in the *nachem* prayer of the *Mincha* service for the Ninth of Ab, ". . . For Thou, O Lord, didst consume it [the Temple] with fire and through fire wilt Thou in future rebuild it. . . ." The text of this prayer is based upon the *Yerushalmi*, *Berakhot*, IV, 3. Regarding the apparent con-

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tradition between Rashi as here cited and Rashi's comments on Ezekiel 43:11 see Rabbi Shlomo Yosef Zevin, "Mikdash he-'Atid le-Or ha-Halakhah," *Machanayim*, No. 119 (5725), p. 14, for an ingenious resolution based upon *Teshuvot Dirvrei Ta'am* (Warsaw, 5664).

3. *Sefer ha-Mitzvot*, No. 20. Saadia Gaon, too, includes the building of the *Bet ha-Mikdash* in his list of communal obligations. *Sefer ha-Mitzvot le-Rabbenu Sa'adya Gaon, Minyan Shishim ve-Chamesh ha-Parshiyot*, No. 51.

4. It should however be noted that the *Ri mi-Gash* in his commentary to *Shevu'ot* 16a limits the application of R. Joshua's dictum to cases of temporary demolition or absence of the Temple walls such as occurred during the period of construction following the return of Ezra or the reconstruction of the Temple by Herod, inferring that it is inapplicable during periods of desolation. Despite the quotation by the Mishnah of the Halakhah in the name of R. Judah, the Rabad terms the Rambam's incorporation of this provision in the *M. T.* "his [Rambam's] own theory." R. David Alexander of Lissa, *Migdal David* (Warsaw, 5635), p. 27, explains that this characterization of the Rambam's position is rooted in Rabad's interpretation of the Mishnah in the manner of the *Ri mi-Gash* — an interpretation which effectively negates any inference regarding permissibility of sacrifice after the destruction. In addition, citing numerous parallel uses of the phrase "I have heard," the author of *Migdal David* endeavors to demonstrate that this terminology indicates the transmitter's disagreement with the Halakhah he has "heard."

5. It is, however, possible that the intended meaning is that the penalty is actually incurred for the *haktarah* — burning of the various parts of the animal — rather than for the slaughtering. *Haktarah* other than on the Temple site is culpable even though the sacrificial animal is not *ra'uy le-fnim*. See *Mishneh le-Melekh Klei ha-Mikdash*, V, 16 and R. Zevi Hirsch Chajes, *Kuntres Acharon 'Avodat ha-Kodesh*, ch. 1.

6. Astonishingly, Chajes claims to have seen *Sifrei ha-'amin* which report that the paschal sacrifice was offered as late as during the reign of Justinian, at which time it was finally abrogated.

7. On the declared intention of the Emperor Julian (361-363) to rebuild the Temple so that the Jews might resume the offering of sacrifices and on Jewish reactions to this abortive proposal see Salo W. Baron, *A Social and Religious History of the Jews* (Philadelphia, 1952), II, 160 and 392, note 41.

8. *Vide Kaftor va-Ferach*, ed. Joseph Blumenfeld (New York, 5718), p. 214, note 17, and H. J. Zimmels, "Erez Israel in der Responsenliteratur des späteren Mittelalters," *Monatsschrift für Geschichte und Wissenschaft des Judentums*, LXXIV (1930), p. 50, note 6.

9. In fact R. Solomon Drimer of Skole in an undated responsum quotes an unnamed interlocutor who reported that "the sages of the Sephardim and of Lithuania wished to sacrifice [the paschal offering] this past *Erev Pesach*." *Teshuvot Bet Shelomo* (Lemberg, 5637-5651), *Yoreh De'ah* II, No. 125.

10. In further support of this view Kalisher cites the wording of the *Mussaf* service of *Rosh Chodesh*: "A new altar shalt Thou establish in Zion and the burnt offering of the New Moon shall we offer upon it," which is subsequently

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followed by the phrase "and in the service of Thy Temple shall we all rejoice." Kalisher argues that reference to rejoicing in the Temple service — which is general in nature — should logically precede the more specific mention of the burnt offering of *Rosh Chodesh*. From this he concludes that the prior reference, which is to a new altar (not to a *Bet ha-Mikdash*), refers to the reinstitution of communal sacrifices and hence is not dependent upon the rebuilding of the *Bet ha-Mikdash*, whereas the subsequent mention of the Temple service refers to private sacrifices which are contingent upon the rebuilding of the Temple (for reasons that will be examined later in this review) and will, therefore, be reinstituted at a latter date.

11. It is a bit puzzling that in endeavoring to establish this point Kalisher does not cite the more explicit and more *a propos* discussion of the Ramban contained in his commentary on Leviticus 1:9 in which he analyzes the rationale underlying the sacrificial precepts.

12. David Alexander of Lissa, *Migdal David* (Warsaw, 5635) finds this sequence also reflected in the blessing included in the repetition of the 'Amidah prior to the priestly benediction, "... cause My *shekhinah* to return to Zion and the sacrificial order to Jerusalem. . . ." The prior reference to the return of the Divine Presence is a quite apparent allusion to the rebuilding of the Temple and in this context precedes reinstitution of the sacrificial order.

13. For some further references see R. Chayyim Medini, *Sedei Chemed* (Warsaw, 5656-5662), *Kuntres ha-Kelalim*, *Ma'arekhet ha-Kof*, LXXVII, 13, Vol. III, 1303.

14. *Migdal David* advances a tenuous argument to the effect that the abrogation of the law of *tumah* with regard to communal sacrifices applies only to incidental occurrences which necessitate suspension of this prohibition in order not to cause a disruption in the chain of communal sacrifice. However once the sacrificial service has lapsed because of other factors, it cannot be resumed other than in a state of ritual purity.

15. Rabbi Samuel David Levine in his *Taharat ha-Kodesh* (Pietrkow, 5690), addressing himself solely to the question of entering the Temple mount, argues that though there may be halakhic impediments in our day with regard to offering other sacrifices, nevertheless preparation of the *parah adumah* (the red heifer) is feasible in order to purify those defiled by *tum'at met*. His proposal provides for conditional sanctification and conditional sacrifice of the *parah adumah*. The stipulations to be made are: if the *kohen* is truly a member of the priestly family and if the original sanctification of the *Bet ha-Mikdash* remains in effect, then the sanctification of the sacrifice be effective and its slaughter and the sprinkling of the blood be effective for sacrificial purposes. If, on the other hand, the *kohen* is not of pure descent and if the original sanctification of the *Bet ha-Mikdash* is now abrogated then the sanctification be ineffective and the slaughter and subsequent sprinkling of blood be secular rather than sacrificial in nature. Despite the fact that the slaughter of unsanctified animals is not permitted within the confines of the Temple, conditional sacrifice is possible with regard to the red heifer because that sacrifice takes place on the *Har ha-Mishcha*—the Mount of Olives—rather than on the Temple site. Those

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purified by this *parah adumah* would then be permitted to enter the Temple mount through the application of a *sefek sefekah*; Perhaps the original sanctification has been abrogated, in which case entry is permissible without further ado. In the event that the original sanctification has not lapsed, perhaps this is an efficacious *parah adumah* and accordingly capable of effecting the cleansing of defilement. It should, however, be noted that R. Levine's proposal concerning the red heifer is fraught with many of the difficulties surrounding *korbanot bezman ha-zeh* cited in this review.

16. Both Kalisher and R. Zevi Hirsh Chajes (*Kuntres 'Acharon*, 'Avodat ha-Kodesh, ch. 1) cite R. Ezekiel Landau, *Nodah bi-Yehudah*, Orach Chayyim Kama, no. 35, to the effect that even in our day we may rely upon the genealogical claims of at least some *kohanim*. The case in question is tangential to our topic but relevant none the less. An individual who had committed adultery with the same woman on numerous occasions inquired of R. Landau what form of penance was required in expiation of his sins and added that on many of these occasions the woman was a *niddah*. R. Landau tentatively advances the opinion that if the woman in question was a *niddah* on the occasion of their first adulterous act he requires expiation for the *issur niddah* as well.

The general rule "one prohibition cannot become effective upon another" does not apply in this instance because although the woman in question is already forbidden to the adulterer as a married woman the prohibition of *niddah* is an *issur mosif*—a more encompassing prohibition, prohibiting the menstruant to her husband as well. The additional prohibition of *niddah* consequently becomes effective and applies to acts of cohabitation both with her husband and others. However, in the case of an adulteress who was not a *niddah* on the occasion of her first infraction, the very act of adultery renders her forbidden to her husband. Since she is already forbidden to all other men on account of her marital status any subsequent state of *niddah* cannot add to the severity of her prohibition ('*en issur chol al issur*). Reconsidering, R. Landau argues that subsequent *niddah* (after the adulterous act) is indeed an *issur mosif* since in becoming effective it carries with it a prohibition against entering the Temple. If not for the *issur niddah* it would be permissible for the adulteress to enter the Temple courtyard for the purpose of offering the paschal sacrifice. She would be permitted to do so despite the fact that at present we are all *teme'ei metim* because the *korban Pesach* may be offered in a state of *tum'ah* if a majority of the community has become defiled through contact with the dead. However, the principle of *tum'ah hutrah be-tzibur* does not apply to the *tum'ah* of *niddah* or *zivah*. From this entire discussion Kalisher and Chajes conclude that the *Nod'ah bi-Yehudah* considered the offering of the *korban pesach* a distinct possibility. However, a careful examination of the responsum in question shows the opposite to be the case. R. Landau cites the *Kaftor va-Ferach* as objecting to the reinstitution of the paschal sacrifice because we lack priests of verified genealogy. To this he adds that "somewhere in the world there does exist a genealogically pure priest." It would seem that the *Nod'ah bi-Yehudah* accepts the fact that we cannot determine which of the priests are of pure descent. But since the sacrifice of the *pesach* is theoretically possible and our inability to discover the identity of the true *kohanim* is merely a tech-

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nical failure, the prohibition of *niddah* does indeed become superimposed upon the prohibition of adultery.

17. The *Zevach Todah* is composed of expository notes included by the Chofetz Chaim in the *Likutei Halakhot* (Pietrokow, 5670). The entire work is known by the latter name.

18. D. Levine, *Taharat ha-Kodesh*, cites *M.T., Parah 'Adumah* III, 4, that a total of nine red heifers was offered from the time of Moses until the destruction of the Second Commonwealth and that a tenth will be brought by the Messiah. He concludes that the reason that the red heifer cannot be prepared in our day is because we have no means of ascertaining the geneological purity of the *kohanim*.

19. It is of interest to note that the fourth edition of Kalisher's *Derishat Zion* was published in Israel in 5679 and was prefaced by a letter of approbation signed by the *Bet Din* of Jerusalem of which R. Frank was then the junior member. The treatise *Har Zevi* authored by R. Frank, in which he emphatically disagrees with Kalisher's conclusions was first printed as an appendix to that edition of the *Derishat Zion*.

20. Addressing himself to a different question entirely, R. Moses Sofer (*Teshuvot Chatam Sofer, Yoreh De'ah*, 236) cites Rashi's interpretation of Exodus 25:9, "According to all that I show thee, the pattern of the tabernacle and the pattern of all the furniture, and so shall ye make it." Troubled by the incongruous usage of the word "and" in *ve-khen ta'asu*, Rashi, referring to *Sanhedrin* 16b and *Shevuot* 14b, interprets this as an injunction to future generations. The Ramban, in his commentary on this passage, raises an obvious objection to Rashi's interpretation: namely, that Solomon did indeed deviate from these specifications. R. Moses Sofer emends Rashi's interpretation and views the phrase "and so shall ye make it" as referring back to the very beginning of the passage "*Kekhol 'asher 'ani mar'eh otcha*—according to all that I show thee" which he takes to mean: that in subsequent generations any rebuilding of the Sanctuary must be in accordance with "all that I show thee"—a specific prophetic revelation prior to each construction as was the case with the building of the Tabernacle. According to this view it is absolutely impossible to rebuild the Temple other than under clearly enunciated prophetic instructions.

21. Similar statements are also found in *Midrash Rabbah, Shemot*, II, 2; *Midrash Rabbah Bamidbar* XI, 3; *Shir ha-Shirim Rabbah*, II, 22; *Midrash 'Ekha*, I, 32; *Yalkut Shimoni Melakhim*, 196; *Midrash Shochar Tov*, Psalms, 11:5; and *Zohar, Shemot*, 5b. Cf. also *Tanna debe 'Eliyyahu Rabbah*, ch. XXX.

22. Cf. also *Teshuvot Bet Shelomo, Yoreh De'ah* II, No. 125; *Yaskil 'Avdi*, Vol. 1, letter of approbation bearing signature of Rabbi A. I. Kook.

23. A further implication of this uncertainty is grounded upon the Halakhah that *zavim* and *nidot* are not permitted to enter any section of the Temple mount. Accordingly if the Wailing Wall marks the boundary of the Temple courtyard proper (meaning that it is set in a distance from the boundary of the *har ha-bayit*) those possessed of these forms of defilement are forbidden to approach the *kotel ma'aravi*. A further discussion of these questions is contained in *Har Zevi*

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and Judah Leib Graubart, *Chavalim be-Ne'imim* (Lodz, 5694), Vol. 4, No. 80.

24. *Vide She' elat David* and *Teshuvot Bet Shelomo*, loc. cit.

25. In *ha-Levanon*, Vol. 1, No. 8, p. 63, dated 19 Elul, 5623, the journal wherein R. Friedman's treatise first appeared in serial form, there is a note appended by the editor indicating that R. Samuel Salant, famed rabbi of the Ashkenazic community of Jerusalem, concurred with R. Friedman regarding the question of *tekhelet*. Cf. also R. Isaac Schmelkes, *Teshuvot Bet Yitzchak* (Lemberg, 5655), *Yoreh De'ah* II, No. 83.

26. Regarding these various dyes see also *Teshuvot Besamim Rosh*, No. 244.

27. For a detailed discussion of these various opinions see *Mishneh le-Melekh* on *M.T.*, *Klei ha-Mikdash*, VIII, 2.

28. For a discussion of this topic see *Sedei Chemed*, *Kuntres ha-Kelalim*, *Ma'arekhet ha-Tet*, XX-XXIII, Vol. I, 437.

29. Cf. *Teshuvot Bet Yitzchak*, *Yoreh De'ah* II, No. 83.

30. See also Isaac Aaron ha-Levi Itinga, *Teshuvot Mahari ha-Levi* (Lemberg, 5653), Vol. I, No. 88.